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Director's Decisions for California

Public Sale

1955-1960

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Los Angeles 079531,
et al -
5.04g:JFR

April 19, 1955

Registered Mail
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DECISION

Helen L. Gildred Roy M. Brown	:	Public Sale Los Angeles 079531, 086000, 0107160

Manager's Decision Vacated in Part - Case Remanded

Mrs. Helen L. Gildred has appealed from the decision of the Manager, Los Angeles Land Office, dated September 16, 1953, which divided the property offered at public auction under the above applications among preference right applicants as follows:

Helen L. Gildred: NW$\frac{1}{4}$SE$\frac{1}{4}$, SW$\frac{1}{4}$ sec. 2, E$\frac{1}{2}$SE$\frac{1}{4}$ sec. 3,
T. 13 S., R. 1 W., S.B.M., California,
containing 280 acres.

Roy M. Brown: N$\frac{1}{2}$NE$\frac{1}{4}$, SW$\frac{1}{4}$NE$\frac{1}{4}$ sec. 10, and
NW$\frac{1}{4}$NW$\frac{1}{4}$ sec. 11, T. 13 S., R.1 W.,
S.B.M., California, containing 160 acres.

The appellant has submitted specifications of error contending: 1. The Manager erred in considering Mr. Roy E. Brown and/or Mrs. Audrey L. Brown as preference bidders for the land included in Public Sale Application Serial No. 079531. No property owned by Mr. or Mrs. Brown, or either of them, is contiguous to any land included in said sale, and neither Mr. or Mrs. Brown has any preference right to bid upon or purchase any portion of said land under the provisions of the rules of practice (43 C.F.R. Sec. 250.11). (Appellant's citation is not to the rules of practice but to the regulations governing Public Sales).

2. The Manager erred in granting to Mr. Brown one hundred and sixty acres out of a total of two hundred and forty acres included in Public Sale Application Serial No. 086000.

3. The Manager erred in not considering the character of each subdivision applied for by Helen L. Gildred.

4. The Manager erred in not giving due consideration to the topography and land pattern and other evidence presented by the field examiner and the parties in interest.

5. The evidence is insufficient to justify the decision in the following respects:

(a) Mr. and Mrs. Brown own the NW$\frac{1}{4}$ sec. 10, T. 13 S., R. 1 W., S.B.M., together with other land to the west thereof. The land awarded to Mr. Brown is the N$\frac{1}{2}$NE$\frac{1}{4}$ and the SW$\frac{1}{4}$NE$\frac{1}{4}$ of sec. 10, and the NW$\frac{1}{4}$NW$\frac{1}{4}$ of sec. 11 in said T. 13, which adjoins said property on the east. All of the land slopes in a general direction from east to west and a very deep canyon, which cannot be crossed, bisects the NE$\frac{1}{4}$NE$\frac{1}{4}$ sec. 10, and the NW$\frac{1}{4}$NW$\frac{1}{4}$ of sec. 11, so that it is impossible for Mr. Brown to reach the last mentioned property from his property without trespassing upon property owned by private individuals, including petitioner herein, and without taking a circuitous route of approximately seven miles.

(b) Most of the property owned by Mr. and Mrs. Brown lies in one watershed, while most of the property awarded by the Manager to Mr. Brown lies in a separate and distinct watershed; the land pattern is such that petitioners can use all of said land involved in this sale in connection with adjoining land owned by them, whereas said Roy M. Brown cannot make such beneficial use of said property.

(c) The division made by the Manager of the property involved in Petition No. 086000 does not take into consideration natural boundaries, mountain passes, canyons and other topographic features of the territory, and is made in a manner wholly inconsistent with such boundaries.

The record shows that the appellant was not an adjoining owner to the land applied for in Serial No. 086000 and that the Manager consolidated the land described therein with application Serial No. 079531, which consolidation resulted in one contiguous parcel of land embracing the land in both applications which was advertised and sold as such. "The owners of contiguous lands have a preference right for a period of 30 days after the highest bid has been received, to purchase the land offered for sale," etc. 43 C.F.R., 250.11(b). The record shows that at the date of the sale and during the 30-day preference period thereafter Mr. and Mrs. Brown were the owners in fee of land contiguous to the subdivisions offered at the public sale and that they were otherwise qualified as preference right claimants.

It was therefore proper for the Manager to entertain the bid received from Mr. and Mrs. Brown on all of the lands offered at the public sale and, in the absence of an agreement between the preference right claimants, to apportion the subdivisions to them so as to equalize as nearly as possible the tracts they should be permitted to purchase. The fact that a canyon cuts through a portion of the land in issue which may render access to some of the land more difficult or that such lands may be used to a greater advantage by the appellant, as contended by her,

are not persu[illegible]ive factors such as to warrant [illegible]denial of the preference rights secured to Mr. and Mrs. Brown by the law and the regulations.

The record contains information to the effect that title to SE¼NE¼, NE¼SE¼ sec. 10, and SW¼NW¼, NW¼SW¼ sec. 11, T. 13 S., R. 1 W., S.B.M., was vested in the appellant December 15, 1953. However, since this land was not owned by the appellant during the preference right period it cannot be considered in the division of the property among the preference right claimants.

The record further shows that Mr. Charles A. Judson raised Mr. Gildred's bid for the SW¼, NW¼SE¼ sec. 2, T. 13 S., R. 1 W., S.B.M., whereupon Mr. Gildred interrupted the sale, engaged in conversation with Mr. Judson assuring him that he would transfer to him the tracts desired after he (Gildred) secured a patent to all of the land offered. The fact that Mr. Judson submitted a higher bid which was withdrawn at the close of the bidding together with Mr. Gildred's action when the bid was made, casts sufficient doubt on the validity of the sale to warrant a vacation of the proceedings as to the subdivisions affected. Attention is invited to A-26942, Emery E. Arbaney et als (December 16, 1953), wherein the Department ruled that: "When any evidence appears in proceedings for a public sale under 43 U.S.C.A., 1171 as amended, which indicates that prior to the sale the interested parties or some of them may have arrived at or attempted to arrive at an agreement not to bid against each other, doubt is cast upon the validity of the proceedings and it is necessary to vacate the sale."

Therefore it becomes necessary to vacate the decision of September 16, 1953, in so far as it applies to the SW¼, NE¼SE¼ sec. 2, T. 13 S., R. 1 W., S.B.M., and remand the case to the Manager with the direction that the sale with respect to said land will stand vacated 30 days after receipt of this decision unless the interested parties furnish the Manager evidence satisfactory to him that such agreement was not made or attempted before the sale was made.

Otherwise the decision of the Manager is affirmed.

This decision is subject for a period of 30 days to the right of appeal to the Secretary of the Interior. Should an appeal be filed it must conform to the provisions of 43 C.F.R., Secs. 221.75 and 221.76. See Circular 1818, copy attached.

W. G. Guernsey
Associate Director

Attachment

Distribution:
Mrs. Helen L. Gildred (Reg. mail)
Roy M. Brown
Gray, Cary, Ames & Frye
All Area Administrators
All State Supervisors
All L.O. Managers

Attorneys Reading File
BLM Reading File
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Mr. Ribble

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In reply refer to:

Los Angeles 072136
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 21, 1955

Registered Mail
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DECISION

Lawrence R. Carter : Public Sale

Manager's Decision Affirmed

By decision of March 8, 1949, the Manager, Land Office, Los Angeles, California, rejected public sale application Los Angeles 072136 of Lawrence R. Carter, because the lands applied for are needed for the Navy project to provide additional water supply for Camp Pendleton and therefore was not available for disposal by public sale.

From this decision the applicant has appealed to the Director and has alleged that the lands applied for "are not susceptible to the use set forth in the order of rejection in that none of said land is water bearing, nor can it be used in any way by the Navy project in Camp Pendleton."

There are several letters in the case record from the Department of the Navy requesting that action be suspended on the public sale application until the water resources of the Santa Margarita watershed has been completed. In its letter of October 6, 1955, the Department of the Navy stated that litigation involving the rights to the use of the water of the Santa Margarita River is pending in the United States District Court, Los Angeles, and appeals from judgments entered by the court in the proceedings are pending in the United States Court of Appeals, 9th Circuit, and requested that the public sale application be "denied."

Section 14 of the Taylor Grazing Act (June 28, 1954, 48 Stat. 1274; 43 U.S.C. 1171) authorizes the Secretary of the Interior, in his discretion, to order into market and sell at public auction any isolated or disconnected tract of the public domain. Where the sale of such a tract, however advantageous to the applicant or to the owners of contiguous lands, would appear to be opposed to the public interest, the Secretary will not order the land into market. See Departmental decisions A-23771 dated February 29, 1944, and A-23766 dated February 23, 1944.

Since the public sale law does not require the Secretary of the Interior to order land into the market and sell at public auction, and since in this case it has been shown that it is in the best public interest to retain the land in public ownership, it is concluded that the action of the Manager was correct and his decision of March 8, 1949, is sustained.

The decision of this office is subject to the right of appeal to the Secretary of the Interior within 30 days from receipt of same. If an appeal to the Secretary is filed, it must conform to the Rules of Practice contained in the attached Circular No. 1818.

For the Director:
A. H. Kerr

Attachment

Copy to: George M. Pierson, Esq., Atty at Law--(Registered Mail)
Lawrence R. Carter--(Ordinary Mail)
Dept. of the Navy, Bureau of Yards and Docks
AO-1
LO(Los Angeles)-(3)
SO(Sacramento)-(3)
Lands Staff Officer-(2)
Appeals Unit-(12)
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In reply refer to:

Sacramento 047605
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 19, 1955

Registered Mail
Return Receipt Requested

DECISION

Emil E. Passalacqua : Public Sale
: (Second Proviso)

Decision of Manager Affirmed

Mr. Emil E. Passalacqua made application for public sale, Sacramento 047605, for the E½E½ sec. 23 and NW¼NW¼ sec. 25, T. 24 N., R. 17 W., Mount Diablo Meridian, California, containing 200 acres. The Manager, Sacramento Land Office, rejected the application by decision of August 19, 1955, on the grounds that the land contains merchantable timber and is a part of a larger unit which is being managed for sustained yield timber production. Mr. Passalacqua thereupon appealed from the Manager's decision to the Director.

Mr. Passalacqua declares in his appeal that there is no merchantable timber on the land at the present time, as what little there was had been killed by fire. He submitted a timber cruise report and map, dated August 1955, which he made in conjunction with Mr. L. E. Fear, a private timber cruiser. His cruise report and map show that only 22 acres remain in green, merchantable timber with a total volume of 146 M bd. ft. About 60 acres are shown to be burnt over and logged land, the rest being shown as brush. This seems to be a reasonable picture as the lands now stand.

As revealed by a 1949 inventory map prepared by the State of California Department of Natural Resources, there are other factors to be considered. The map shows part (about 90 acres) of the tract designated by the appellant as brush land, is actually classed as "nontimber plus" land. "Nontimber plus" land is defined as lands that do not possess the climate and soil qualities essential for the production of commercial conifer timber crops "but are lands with a tree stand on terrain that would favor harvesting the trees." "Non-timber" land can support hardwoods but not conifers. Hardwoods are not generally marketable in this region but they do provide needed watershed protection. There was also a small area of non-stocked conifer land. The rest was shown to be commercial conifer timber land.

This map shows that the whole area applied for was at one time stocked to timber, and is capable of supporting a timber stand, either hardwoods or conifers. The fact that some of it is now non-stocked to trees because of fire or other reasons does not negate the fact that trees can be grown to merchantable size on the land.

The Sacramento District Forester has indicated that these lands are an integral part of a forest management program of this Bureau and that the loss of this 200 acres would serve to materially increase the problems of managing the rest of the area. The subject lands are part of a forest management block of about 6400 acres and this block is in proximity to several similar blocks.

Since this land is chiefly valuable for timber production and should be retained in Federal Ownership for administration as part of a sustained-yield program, it is apparent that the rejection of the public sale application is correct. Jacob L. Henseth, A-27156 (July 27, 1955).

Accordingly, the decision of the Manager is affirmed.

This decision is subject for 30 days from the receipt of same, to the right of appeal to the Secretary of the Interior. If an appeal is filed, it must conform to the provisions of 43 CFR 221.75 and 221.76. See Circular No. 1818 attached.

For the Director:

Attachment

Distribution:
Peter Mannino, Atty. for appellant--(Registered Mail)
Emil E. Passalacqua--(Regular Mail)
Each AO (1)
Each SO (3)
Each LO (3)
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Forestry Staff Officer (2)
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In reply refer to:

Los Angeles 091275
5.04g

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 13, 1955

Registered Mail
Return Receipt Requested

DECISION

James O. Hammontree : Public Sale Application

Decision of Manager Affirmed

By decision of October 11, 1954, the Manager, Land Office, Los Angeles, California, rejected public sale application Los Angeles 091275, because determination was made that disposal of the land through private exchange would effect its highest and best use. The land applied for is described as follows:

T. 26 S., R. 36 E., M.D.M., California
Sec. 6, Lot 7, $SE\frac{1}{4}SW\frac{1}{4}$ (81.74 acres).

On November 9, 1954, the applicant filed an appeal from the Manager's decision and stated as his reason that "the property would be of more value to me as it adjoins my present property."

On February 28, 1951, Carl G. Allen filed application Los Angeles 088528, under Sec. 8 of the Taylor Grazing Act, as amended (43 U.S.C., 1952 ed.), embracing among other lands Lot 7, $SE\frac{1}{4}SW\frac{1}{4}$ sec. 6, T. 26 S., R. 36 E., M.D.M., California.

The Department has held that the public sale statute (Sec. 2289 R.S.), is a grant of permissive authority to sell or not to sell certain public lands as the Secretary shall determine to be proper. (See Departmental decision A-23804 of John A. Henry, dated June 27, 1944). Further, under Sec. 7 of the Taylor Grazing Act, public lands may be disposed of only in accordance with their highest use value.

It has been determined by a field examination on the ground that the highest use of this land is for private exchange, since the purpose of private exchange application Los Angeles 088528 is to eliminate Southern Pacific lands within the Joshua Tree National Monument and is in the public interest.

Since, as noted above, it is not mandatory upon the Secretary, or his designated agent, to sell public land under Sec. 2289 R.S., and since it has been determined that disposal of this tract through private exchange is the highest use value, it is concluded that the action of the Manager is correct, and his decision of October 11, 1954, is affirmed.

This decision is subject for 30 days to a right of appeal to the Secretary of the Interior. If an appeal is filed, it must conform to the provisions of 43 CFR 221.75 and 221.76. See Circular No. 1818 attached.

For the Director:

Attachment

Copy to:
T. R. Claflin, Atty. at Law (Registered Mail)
James O. Hammontree (Regular Mail)
Carl G. Allen (Regular Mail)
AO-1
SO (Sacramento) (3)
LO (Los Angeles) (3)
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Sacramento 048804
5.04g

January 5, 1956

DECISION

John A. Gregory

Public Sale
(Second Proviso)

Decision of Manager Affirmed

The Manager, Sacramento Land Office, by decision of August 19, 1955, rejected public sale application Sacramento 048804, filed by Mr. John A. Gregory. Mr. Gregory has appealed to the Director from this decision. The rejection was based on the fact that the land contained merchantable timber and could be managed with a larger unit to form a single unit for sustained timber production.

Mr. Gregory has applied for the sale of the SW¼SW¼, Sec. 27 and SE¼SE¼, Sec. 28, T. 3 S., R. 18 E., Mount Diablo Meridian, containing 80 acres. He stated in his appeal that no timber had ever been removed from land in the vicinity, indicating that this was a clue to the lack of worth-while timber. He also stated that most of the timber in question was on his property. It is his opinion that, since there is no other Government timber in the area, the land is not subject to timber management, is brush and grassland, and best suited to grazing.

Mr. Gregory's charge that the field examiner was not accurate in locating the subject lands is not borne out by the facts in the record. The examiner exercised all reasonable diligence in locating the tract. In addition, inventory maps prepared by the State of California Department of Natural Resources bear out the examiner's findings as to location, type, and amount of merchantable timber present. The appellant errs in saying that there is no other Government timber in the area. Approximately 1/3 of the Government land in Sections 27 and 28 is commercial timber land. The lands under application are an integral part of a forest management program of this Bureau.

An application for public sale gives the applicant no insurance that the land will be classified for sale. By the authority of the Secretary of the Interior, which is delegated to officers of the Bureau of Land Management, it is discretionary whether or not to classify lands for public sale (43 CFR Sec. 250.4). The record shows, and is supported by supplemental information, that the land applied for is chiefly valuable for the production of timber in connection with a forest management program. The appellant has submitted no evidence to refute this classification. The rejection of the application is correct. Jacob L. Harseth, A-27516 (July 27, 1955); Robert D. Pacheco, A-26698, (July 21, 1953).

The decision of the Manager is affirmed.

This decision is subject, for 30 days from the receipt of same, to the right of appeal to the Secretary of the Interior. If an appeal is filed, it must conform to the provisions of 43 CFR 221.75 and 221.76. See Circular No. 1818 attached.

For the Director:
A. H. Kerr

Attachment

Distribution:

John A. Gregory (Registered Mail)
Each AO
Each SO (3)
Each LO (3)
Lands Staff Officer (2)
Forestry Staff Officer (2)
District Forestry Office, Sacramento
Case File
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In reply refer to:

Sacramento 047247
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 10, 1956

Registered Mail
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DECISION

Charles J. Valente : Public Sale (Second Proviso)

Decision of Manager Affirmed

Mr. Charles J. Valente has appealed to the Director from a decision of the Manager, Sacramento Land Office, dated August 5, 1955, rejecting his application for public sale, Sacramento 047247. The Manager held that the land contained merchantable timber and could easily be managed with a larger nearby area to form a single unit for sustained yield timber production.

Mr. Valente, through his attorney, Mr. Virgil M. Airola, states that the subject lands are in a high fire hazard area because the surrounding private timber has been removed and only highly inflammable vegetation is left on those private lands. He says that the land applied for is many miles from the National Forest and that there is little merchantable timber and no significant timber reproduction on the area. Mr. Valente also declares that any attempt to manage the land or adjacent lands for timber production by anyone, including the Government, would result in "uneconomical and futile managerial administration."

It is significant to note that, generally, Federal and State fire protection agencies have always had more resources to organize against and fight forest and range fires than any private individual. The appellant has presented no evidence that this is not the case here also. The Sacramento District Forester indicates that the lands applied for are an integral part of a forest management program of this Bureau, and that the area is primarily valuable for the production of commercial timber. The District Forester also indicates that the timber presently on the land is worth between $5,000 and $6,000. A study was made by this office of inventory maps prepared by the State of California Department of Natural Resources. The maps reveal that most of the land applied for is now producing a merchantable timber crop, or has been denuded of timber in the past, but does have a commercial timber potential which will be realized by continued forest management as part of the above-mentioned unit. The Stanislaus National Forest is three miles from the subject lands.

Mr. Valente has given no evidence to support his charge that Government management of the subject lands for timber production would be uneconomical or futile.

The Secretary of the Interior has the authority to decide whether or not lands should be classified for public sale (43 CFR sec. 250.4). "As the evidence in the record substantiates the determination that the land applied for is chiefly valuable for timber production in connection with a sustained-yield program, and the appellant has submitted no evidence to contradict this classification, it would appear that the rejection of the application was correct." Jacob L. Hanseth, A-27156 (July 27, 1955); also Robert D. Pacheco, A-26698 (July 21, 1953).

Therefore, the decision of the Manager is affirmed.

This decision is subject, for 30 days from the receipt of same, to the right of appeal to the Secretary of the Interior. If an appeal is filed, it must conform to the provisions of 43 CFR 221.75 and 221.76. See Circular No. 1818, attached.

For the Director:

a. H.

Attachment

DISTRIBUTION:
Mr. Virgil M. Airola, Attorney for Appellant (Registered Mail)
Mr. Charles J. Valente (Regular Mail)
Each AO (1)
Each SO (3)
Each LO (3)
Lands Staff Officer (2)
Case File
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In reply refer to:

Los Angeles 095284
054957-A
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UNITED STATES
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Bureau of Land Management
Washington 25, D. C.

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JUL 16 1956
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July 2, 1956

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DECISION

Gladys M. Waters : Public Sale Application

Manager's Decision Affirmed

Gladys M. Waters has filed an appeal to the Director from the decision of the Manager, Land Office, Los Angeles, California, dated May 5, 1954, which canceled grazing lease Los Angeles 054957-A as to the SE¼NE¼ section 3, T. 15 S., R. 1 E., S.B.M., California.

In the appeal the appellant does not show how the partial cancelation of her grazing lease will affect her livestock operations. She merely states that the land is very mountainous and that she has had poor relations with the individuals who have applied to purchase the land under the public sale law.

Public sale application Los Angeles 095284, embracing the above-described land was filed by Earl E. and Wineva L. Smith and the land has been classified for disposal under the public sale law.

By Executive Order No. 6910 of November 26, 1934, the vacant, unreserved and unappropriated public lands in California and the other public land states were temporarily withdrawn from settlement, location, sale or entry and reserved for classification, and pending determination of the most useful purpose to which such lands may be put in consideration of the act of June 28, 1934 (48 Stat. 1269), and for conservation and development of natural resources, subject to existing valid rights.

Section 2(d) of the grazing lease reserves to the lessor the right to classify and dispose of any part of the leased lands under applicable public land laws, pursuant to Section 7 of the Taylor Grazing Act, as amended (43 U.S.C. 1952 ed., sec. 315f), and

Section 14 of that act (the public sale law, R. S. sec. 2455, 43 U.S.C., 1952 ed., sec. 1171).

As stated above, the appellant has not shown that the cancellation of her lease will affect her livestock operations in any respect. Based on a field examination made on the ground, it has been reported that the public sale applicant owns land on the east and south of the 40-acre tract in question and can use the land advantageously. It has also been reported that the appellant has not used this tract for grazing purposes and has no improvements thereon.

In view of the provisions of the Taylor Grazing Act, the Public Sale law and regulations thereunder, and the appropriate classification report, it is concluded that the Manager's decision of May 5, 1954, was proper and it is affirmed. (See Departmental decision A-27249, Sidney Smith, March 12, 1956).

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34, inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

In the event of appeal, the adverse parties to be served with notice thereof are: Earl E. and Wineva L. Smith, R. D. 2, Box 234, Lakeside, California.

For the Director:

A. H. Kerr

Attachment

Distribution:
- Gladys M. Waters (Registered mail)
- Earl E. and Wineva L. Smith (Regular mail)
- Lands Staff Officer (1)
- PAS
- Appeals List No. 1

In reply refer to:

Los Angeles 0132569
5.04g

UNITED STATES
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Bureau of Land Management
Washington 25, D. C.

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July 27, 1956

DECISION

Mike Creed Meeken	:	Public Sale Application (Second Proviso)

Decision of Manager Reversed
Case Remanded for Further Action

Mr. Meeken appealed to the Director of the Bureau of Land Management from a decision of the Manager of the Land Office at Los Angeles, California, dated May 2, 1955, which rejected his public sale application on the grounds that the land applied for is not isolated, and that the interest held by the applicant in adjoining land is not acceptable in satisfaction of the " *** ownership of the adjoining land requirement of the Public Sale Law."

Mr. Meeken's application is for Lots 1, 2, 3, 4, S½N½, N½S½, S½SE¼ sec. 2, T. 5 N., R. 2 W., S.B.M., California, comprising 469.04 acres. The application states that the subject tract is not isolated, but rather is mountainous or too rough for cultivation. Mr. Meeken did not claim ownership in fee of adjoining land, but stated in the application that he is the holder of a valid entry, Los Angeles 0112293, on land adjoining the subject tract. The appeal referred to the fact that the application is for a rough and mountainous tract rather than an isolated tract, and stated that the holding of a valid entry on adjoining land is sufficient to satisfy the requirements of 43 CFR 250.7 with respect to qualifications of applicants for rough and mountainous tracts.

Since the application is for a tract alleged to be mountainous or too rough for cultivation, the case is governed by the Second Proviso of Sec. 2455, Revised Statutes, as amended by Sec. 14 of the Taylor Grazing Act (48 Stat. 1274; 43 U.S.C., 1952 ed., sec. 1171), which provides as follows:

> "*** any legal subdivisions of the public land, not exceeding seven hundred and sixty acres, the greater part of which is mountainous or too rough for cultivation, may, in the discretion of the said Secretary, be ordered into the market and sold pursuant to this section upon the application of any person who owns land or holds a valid entry of lands adjoining such tract, regardless of the fact that such tract may not be isolated or disconnected within the meaning of this section ***."

The tract need not be isolated to be offered for public sale under the quoted proviso, and Mr. Meeken need only hold a valid entry on adjoining land to qualify in that respect as an applicant.

Regulation 43 CFR 250.7 (b) provides that in connection with the entry claimed to be held on adjoining land, the public sale applicant must have met the requirements of the law. Such regulation has not been interpreted to require that the applicant have completed all requirements which are necessary for the issuance of a patent. A regulation to the same effect (43 L.D. 485, 490 (1915))was in force when the case of Boyd v. Hopps, 47 L.D. 1 (1919) was considered. In the Boyd case, supra, a desert land entry on adjoining land satisfied the above noted requirement even though the entry had not been carried to final proof, and the sale was validly held pursuant to the application even though after the date of the application and before the date of the sale the desert land entry was cancelled.

The Department has not strictly construed the word "entry" as used in the cited proviso. In Stephen Colegrove, A-22793 (April 29, 1941), it was held that an applicant for public sale, on whose behalf the State had filed an indemnity school land selection for adjoining lands did not technically hold an "entry" on adjoining land, but in the spirit and intent of the law is qualified and may be regarded as being in the "position of holding a valid entry" on adjoining land so as to qualify as an applicant for the sale in question. The Department emphasized that it seemed clear that the mentioned selection would be approved.

The alleged valid entry of Mr. Meeken is a small tract lease, Los Angeles 0112293, issued August 16, 1954, for a three year period, for lease and sale pursuant to 43 CFR 257.13 (a), Circular 1764, 15 F.R. 16222 (September 16, 1950), which provides in pertinent part as follows:

> "Lands will not be sold directly under the act but only on the basis of an outstanding lease, containing an applicable option to purchase clause. The option to purchase will apply only to tracts classified for lease and sale, and will afford the lessee * * * an opportunity to purchase the tract at or after the expiration of one year from the date the lease issued, provided the improvements required by the lease have been made, and the lessee * * * has otherwise complied with the terms and conditions of the lease."

Although such a lease with option to purchase may possibly not be an "entry" within the technical meaning of the word, the Colegrove case, supra, is authority for the view that the word "entry" as used in the act was not used in a technical sense. The lease does give the lessee possession of the land and will result in the issuance of patent if the lessee exercises the option to purchase in compliance with the law and regulations. Solicitor's Opinion, Public Sale Act, M 36356 (July 9, 1956), states in pertinent part as follows:

> "I believe that the term 'entry' was not intended to be narrowly construed. The true intent of the public sale law would be most nearly accomplished by treating a holder of a small tract lease with a purchase option, in good standing, as holder of a valid entry for the purpose of making an application for a rough or mountainous tract under the Public Sale Law."

Consequently, if Mr. Meeken has to date complied with the applicable requirements of the lease and is qualified to obtain patent to the small tract, then he qualifies as the holder of a valid entry within the meaning of the second proviso of the Public Sale Act.

For the reasons given, the Manager was in error in rejecting the application on the grounds that the tract is not isolated and that the applicant's interest in adjoining land could not satisfy the requirements of the Public Sale Act. Accordingly, the decision of the Manager is reversed, and the case is remanded for a determination as to whether Mr. Meeken's small tract lease qualifies as a valid entry within the meaning of this decision and for further action on the application consistent therewith.

Because the application was rejected on the grounds listed, a determination was not made as to whether the greater part of each legal subdivision for which Mr. Meeken applied is mountainous or too rough for cultivation within the meaning of the second proviso of the Public Sale Act nor was a determination made as to whether the tract is proper for public sale within the meaning of that act and Section 7 of the Taylor Grazing Act, as amended (43 U.S.C., 1952 ed., Sec. 315(f)). See 43 CFR 250.7, and 43 CFR 250.4(b). Therefore, if Mr. Meeken is determined to hold a valid entry qualifying him in that respect as an applicant for the sale, his application will be referred for investigation and classification in accordance with the usual practice, and a decision on his application will be issued in due course.

Edward Woozley
Director

Distribution:
Mr. Mike Creed Meeken (Regular mail)
Hon. Guy Cordon, Attorney-at-Law
Lands Staff Officer (55)
GST
Appeals List No. 1

See amend
8-24-56

CLASSIFICATION	* 1	Generally
	* 3	Lands mineral in character
MINING CLAIMS	* 1	Generally
	* 3	Contests
PUBLIC SALES	* 1	Generally

The Government has the burden of proving the invalidity of mining claims which involve lands classified by the Government as nonmineral and offered for disposition under the public sale law where it intervenes in a dispute between the high bidder at the public sale and the mining claimants of the lands by appearing at a hearing and presenting evidence on the mineral character of the lands involved.

Fred M. and Mildred E. Turnboo v. Hobart Kile, United States, Intervenor, Sacramento 044666, Contest No. 5239, (August 1, 1956)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Sacramento 044666
Contest No. 5239
5.04g

August 1, 1956

Registered Mail
Return Receipt Requested

DECISION

Fred M. and Mildred E. Turnboo
Protestants-Appellants

v.

Hobart Kile, Protestee
United States, Intervenor
Respondents

Public Sale
S½ of Lot 6 of
NW¼ Sec. 30,
T. 9 N., R. 10 E.,
M. D. M.

Decision of Hearings Officer Reversed

Fred M. and Mildred E. Turnboo have appealed from a decision of the Hearings Officer, Portland, Oregon, dated June 10, 1955, holding their mining claims on the above land "null and void for lack of a discovery."

On September 24, 1954, Hobart and Thelma Kile were declared purchasers of the above land by reason of a public sale held on June 15, 1954.

A protest was filed December 1, 1953 by appellants to the sale of this land on the ground that appellants and their predecessors have since 1911 owned and been in possession of the Empire and North Star mining claims in conflict with the public sale applicant, Kile.

Appellants did not appear at the hearing February 28, 1955, but contented themselves with filing an affidavit alleging "that this land is more valuable for mineral than anything else."

In the present appeal they allege (without corroboration or exhibits of the value of the discovery) that:

> "There is abundance of evidence that there are minerals on and in these claims * * * that visible evidence of ore can be seen in the shafts and tunnels * * * all legal work was kept up and county taxes paid on them."

The land was classified as suitable for disposal at public sale pursuant to a report of examination made in May 1952, showing the land to be non-mineral in character; hence the intervention of the United States at the hearing in effect constituted a request that the mining claims be declared null and void on bases that the land therein is non-mineral in character and there has not been a valid discovery. By such action the Government has the burden of proving the invalidity of the claims. Estate of Victor Hanny, A-26280 (March 5, 1952).

From a review of the testimony at the hearing the conclusion of the Hearings Officer does not appear to be correct.

The Government's witness at the hearing, a mining engineer, testified that he examined the land on January 27, 1955. As to mineralization on the claims he observed a vein which strikes generally north and south and dips steeply to the east, the outcrop of which was visible near the central portion of the land (the east vein) and to the west of this outcropping and nearly parallelling it he observed another vein system (the west vein). He testified that the west vein was a rather strong quartz vein with staining of limonite and occasionally a little dark stain of manganese oxide, also that the vein at its northern point had a shaft sunk in it at one time, which in caving has exposed the vein to a depth of probably 7 feet, and that this vein continued southward from the caved shaft about 250 feet, at which point it is well exposed in an open pit. The vein continues from this point generally north and south and dips steeply to the east. A small amount of pyrite was noted at this point and the vein was noted to be 3½ feet wide at this point. He testified that between the caved shaft and the discovery pit there is a short adit which has crossed the vein, that there are quartz fragments scattered and perhaps 8 feet in width, and that he believes this is a continuation of the east vein.

He testified that most of the work on the claims appeared to have been done on the west portion of the land, the work following an established vein system, and that the aggregate of approximately 300 feet of workings was distributed in three separate workings, the principal of which was a cross cut 79 feet long at a point 27 feet east of the portal, where a quartz vein varying from 6 inches wide to 3 feet wide was encountered for a distance of 48 feet northeasterly, with another vein 52 feet in the main cross cut of approximately 8 inches wide gouge filled fissure. Samples were taken as follows:

Sample No. 1 (Empire claim), taken on the north area from the caved shaft, a 6-foot chip taken horizontally across the dip about 7 feet below the ground surface, the sample consisting of 5 feet of quartz and some silicified rock and one foot of fault gouge, and assaying $5.25 per ton in gold.

Sample No. 2 (Empire), taken 18 feet south from the point where Sample No. 1 was taken, a horizontal chip across the structure of a well exposed white quartz vein 4 feet wide, the sample assaying $1.75 per ton in gold.

Sample No. 3 (Empire), taken at the discovery pit, a horizontal chip 3½ feet wide across the dip of the zone, 4 feet below the ground level, where the vein is in the nature of a silicified host rock, with a strong foot wall striking in a general north and south direction, the sample assaying $1.05 per ton in gold.

Sample No. 4 (North Star), taken from the upper working in the west vein zone, on the floor of the drift, in a narrow fissure of clear gouge and some alteration of the country rock where no quartz was showing, which sample assayed $1.75 per ton in gold.

Sample No. 5 (North Star), taken at the point of intersection of the cross cut generally northeast of the striking vein, from 18 inches of quartz and gouge and 6 inches of wall rock, and assaying 70 cents per ton in gold.

Sample No. 6 (North Star), a one-foot sample taken from the back of the drift across the vein, including 6 inches of quartz and 6 inches of gouge, and assaying 85 cents per ton in gold.

Sample No. 7 (North Star), a 2-foot chip from the face of a short drift following the vein in the discovery pit of the location, from brecciated quartz and clay gouge, with limonitic and manganese staining, which assayed 53 cents per ton in gold.

The mineral examiner concluded from the evidence of mineralization on the land that a man of ordinary prudence would be justified in expending time and effort in attempting to develop the property. With respect to the west vein, although the samples showed weak mineralization, he testified there is an indication that the vein contains valuable minerals but not in mineable quantities, that from the strike of the structure it appeared that it might intersect with the east vein if it continued in the direction it was taking at the last point he observed it, and that it warrants more exploration. As to the east vein he concluded there is a discovery on the claim assaying $5.25 in gold per ton, and that most of the ore that was removed from the mother lode had an average of a third of an ounce of gold per ton, which would make it in the neighborhood of $12 a ton rock.

From the testimony outlined above it appears that the land is mineral in character and that a valuable discovery has been made by the appellants within the rule established by the cases of

Jefferson-Montana Copper Mines Co., 41 L. D. 320 (1912), *Castle v. Womble*, 19 L. D. 455 (1894), *Cameron* v. *United States*, 252 U. S. 450 (1920).

Accordingly, the classification of the land as non-mineral in character and the public sale are hereby revoked. The purchase moneys submitted for the land will be refunded by the Land Office when this decision becomes final.

The decision of the Hearings Officer is reversed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof, and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34, inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

If an appeal is taken herefrom, the adverse parties to be served with notice thereof are Hobart and Thelma Kile, Route 1, Box 12-A, Shingle, California.

Rene Falck
Acting Director

Attachment

DISTRIBUTION:

Mr. Hobart Kile (Registered Mail)
Mr. and Mrs. Fred M. Turnboo (Regular Mail)
Minerals Staff Officer (3)
Geological Survey (6)
Mr. John Sieker, Forest Service, U. S. Dept. of Agriculture (7)
Lands Staff Officer (1)
Appeals List No. 1
Hearings Officer (Area 1)
FAP

RECEIVED
LAND OFFICE
SACRAMENTO, CALIF.
AUG 29 1956
A.M. 7 8 9 10 11 12 1 2 3 4 5 6 P.M.

In reply refer to:
Sacramento 044666
Contest No. 5239
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 24, 1956

Registered Mail
Return Receipt Requested

DECISION

Fred M. and Mildred E. Turnboo
Protestants-Appellants

v.

Hobart Kile, Protestee
United States, Intervenor
Respondents

Public Sale
S½ of Lot 6 of
NW¼ Sec. 30,
T. 9 N., R. 10 E.,
M. D. M.

Acting Director's Decision of August 1, 1956, Amended

Reference is made to the Acting Director's decision of August 1, 1956, which reversed the decision of the Hearings Officer in the above noted mineral contest and revoked the classification of the land as non-mineral in character and its public sale. On page 4 of the decision it was inadvertently stated that Hobart and Thelma Kile, Route 1, Box 12-A, Shingle, California, are the adverse parties to be served with any notice of appeal taken from that decision. The statement should have referred to Fred M. and Mildred E. Turnboo as the adverse parties. The Acting Director's decision is hereby so amended. This is intended only to correct an erroneous statement and does not affect the holding made in that decision.

For the Director:
A. H. Farr

DISTRIBUTION:

Mr. Hobart Kile (Registered Mail)
Mr. and Mrs. Fred M. Turnboo (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (6)
Mr. John Sieker, Forest Service, U. S. Dep't. of Agriculture (7)
Lands Staff Officer (1)
Appeals List No. 1
Hearings Officer (Area 1)
FAF

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Los Angeles 0120985
030968
5.048

Registered Mail
Return Receipt Requested

DECISION

October 18, 1956.

Ernest J. Sweetland, Jr.
Sheep Creek Water Co.

Public Sale Application

Decision of Manager Affirmed

Mr. Ernest J. Sweetland, Jr., has appealed from the decision of the Manager of the Land Office, Los Angeles, California, dated October 22, 1954, rejecting his public sale application filed pursuant to the Second Proviso of Section 2455, Revised Statutes, as amended by Section 14 of the Taylor Grazing Act (48 Stat. 1274; 43 U.S.C. sec. 1171) for the reason that it was determined to be in the public interest to retain the land involved for the protection of the water supply of the Town of Phelan, California.

Public sale application Los Angeles 0120985 was filed by Mr. Sweetland on October 22, 1954 for the SW¼NW¼ sec. 35, T. 4N., R. 7W., S.B.M., California, as a tract which is mountainous or too rough for cultivation. The applicant indicated that he desired the land for the purpose of "developing water thereon and experimental side hill planting of conifers".

The records disclose that the land sought was previously embraced in public sale application Los Angeles 097525 filed September 25, 1952; and that this application was also rejected for the reason that the best public interest would be served by retention of this land in public ownership since it is primarily valuable for protection of the water supply of the Town of Phelan. It was disclosed in connection with this former application that the land sought contained a small reservoir owned by the Sheep Creek Water Company of Phelan, California, which had been constructed under Right of Way Permit Los Angeles 030968 pursuant to the act of March 3, 1891, (26 Stat. 1101; 43 U.S.C. 946 et seq.) and that the company had used the reservoir for thirty years to furnish water to the residents of Phelan; and that the president of the company had opposed the sale of the tract as being inimical to the interests of the company. A field investigation revealed that the land was rough and mountainous; and that the present and potential use of the land was for "grazing and reservoir site".

Mr. Sweetland contends that the water supply of Phelan would be better protected under private ownership than under public ownership from both the standpoint of physical protection and legal restraint; that under private ownership an interested owner and overseerer would be present to protect the reservoir, pipeline, and related equipment from trespassers; and that adequate legal papers could be drawn to cover present and future use of the land. The appellant has submitted for consideration with his appeal a large aerial photograph of the area where the land sought is located showing the reservoir site. On this photograph he has outlined the location of the land applied for and has marked the approximate location of the pipe lines running into and out of the reservoir.

Section 2455 of the Revised Statutes, as amended, supra, provides in part that:

> "* * * any legal subdivision of the public land, not exceeding seven-hundred and sixty acres, the greater part of which is mountainous or too rough for cultivation, may, in the discretion of the * * * Secretary, be ordered into market and sold pursuant to this section upon the application of any person who owns land or holds a valid entry of lands adjoining such tract* * *".

The records indicate that Mr. Sweetland owns adjoining land and the land sought is rough and mountainous. Nevertheless, the disposal of public lands under the above quoted provision is within the discretion of the Secretary of the Interior, or his designated agent. In the exercise of his discretion the Secretary or his agent decides whether a particular disposal would or would not be in the public interest. *Mike Erramouspe, et al.*, A-27179 (September 27, 1955). Under the present circumstances it would appear that the public interest would best be served by retaining the tract applied for in public ownership. The appellant admits that the water supply of Phelan should be maintained. There is nothing in the record to indicate that additional physical protection of this supply is required. Furthermore, it appears advisable that the tract on which the reservoir is situated remain available to meet any future demand, presently foreseen or unforeseen, for additional land which may be required to provide a necessary water supply for the Town of Phelan.

For the reasons indicated above the Manager's decision is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee (in each case). Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

In the event of appeal, the adverse parties to be served with notice thereof is the Sheep Creek Water Co., Phelan, California.

For the Director

A. H. Lower

Attachment

Distribution

Mr. Ernest J. Sweetland, Jr. (Registered Mail)
Sheep Creek Water Co. (Regular Mail)
Lands Staff Officer
Appeals List No. 1
CLS

appealed to Sec.
affirmed A-27452
11-29-57

In reply refer to:

Sacramento 045293
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 19, 1957

DECISION

Registered Mail
Return Receipt Requested

Thomas and Billie Watson
Jess R. Manuel

Public Sale

Decision of Manager Reversed in Part
Public Sale Vacated

Jess R. Manuel has appealed to the Director from a decision dated May 18, 1956, by the Manager, Land Office, Sacramento, California, rejecting his preference-right claim to purchase 240 acres of 680 acres offered for public sale, pursuant to the application of Thomas and Billie Watson (Sacramento 045293), in accordance with Section 2455 of the Revised Statutes, as amended (43 U.S.C. 1171), because of his failure to submit proof of ownership of the whole title in fee to contiguous land within 30 days after the date of the sale, as required by Departmental regulations.

On the date of the sale, March 9, 1956, only one bid was received, that of Mrs. D. L. Clayton, who was declared to be the high bidder. Action was suspended on the sale for a period of 30 days to allow preference-right claimants to assert their rights to purchase the land. 43 CFR 250.11(b).

On April 6, 1956, Thomas and Billie Watson, husband and wife, through their agents, met the high bid for the entire 680 acres and asserted preference-right as owners of contiguous land and submitted a certificate of ownership over the stamped name and title of the county assessor that title in fee simple to property contiguous to that offered at the public sale was vested in Mr. and Mrs. Watson on March 9, 1956. On April 9, 1956, the Watsons filed a certificate of ownership over the signature and seal of the county recorder that title to property contiguous to that offered at the public sale was vested in the Watsons on March 9, 1956.

Jess R. Manuel, the appellant, on April 6, 1956, met the high bid for 240 acres only, and asserted preference-right as owner of adjoining land. He furnished proof of ownership to land which is not contiguous to the land for which he asserted a preference-right and his own statement and that of the Supervising Land Title Abstractor, California State Lands Commission, State Lands Division, to the effect that the $\mathrm{E}\frac{1}{2}\mathrm{NE}\frac{1}{4}$ sec. 21, T. 9 N., R. 6 W., M.D.M., California, which adjoins the land for which he bid, was Clear Listed to the State of California in List No. 246, approved March 6, 1956, and that said land will be sold and patented to him by the State of California, subject to approval of the sale by the State Lands Commission. On May 14, 1956, the appellant filed proof that on April 30, 1956, the date of patent from the State of California, he had title in fee simple to the $\mathrm{W}\frac{1}{2}\mathrm{NE}\frac{1}{4}$ in the above-described section. The Manager in his decision correctly presumed that the description was erroneous and should have read the $\mathrm{E}\frac{1}{2}\mathrm{NE}\frac{1}{4}$ rather than the $\mathrm{W}\frac{1}{2}\mathrm{NE}\frac{1}{4}$ of sec. 21. A corrected and supplemental certificate filed June 1, 1956, verified the inaccuracy of the land description.

On May 18, 1956, the Manager rejected Mr. Mannel's claim because no evidence had been furnished within the preference-right period to show that he was the owner of contiguous land and rejected the bid of Mrs. D. L. Clayton, not an owner of adjoining land, in favor of a preference-right claimant. They were informed that the decision was subject to the right of appeal to the Director within 30 days from receipt of the decision, and that if an appeal is filed it must conform with the Rules of Practice contained in Circular 1895. The decision further held that Thomas and Billie Watson furnished satisfactory proof of ownership of adjoining land with their preference-right bid and as such declared them to be the purchasers of the 680 acres offered for sale.

On May 22, 1956, Mrs. Clayton withdrew her bid for the land involved and stated that she does not desire to appeal from the Manager's decision dated May 18, 1956.

The appellant, Jess R. Manuel, filed his appeal on June 14, 1956, together with his notarized certificate dated June 13, 1956, to the effect that on that date he served a copy of his appeal upon Thomas and Billie Watson. On June 28, 1956, the appellant furnished a Receipt for Registered Article No. 15796 with the addressee shown as Thomas Watson, St. Helena, California. The return receipt requested is not of record.

The appellant, Jess R. Manuel, contends that the rejection of his preference-right claim was erroneous; that on March 6, 1956, he received title to adjoining lands upon which he would be entered on the tax rolls; that all which remained was the formality of the issuance of patent by the State Lands Commission; that the California Legislature being in session in March 1956, the State Lands Commission did not meet in that month thereby delaying issuance of patent; and that he did what was required to establish a preference-right to the lands for which he made a bid.

The applicants, Thomas and Billie Watson, filed their answer to the appeal on July 18, 1956, with proof of service on the appellant by return receipt requested, indicating delivery on July 11, 1956. In substance, they stated that they filed their application for the land offered for public sale on October 19, 1951, whereas, the appellant filed for the adjoining State scrip selection on March 1, 1954; that the appellant has never used the land offered for sale, whereas, they or members of their families have used said lands for stock grazing and stock trails since 1928; that they are owners of adjoining lands; that if the appellant obtains the land sought by him, they will not have access to all parts of their deeded land; that valid entry to adjoining lands is insufficient for a preference-right of purchase; that during the preference-right period the appellant was not an owner in fee simple to any land adjoining the lands offered for public sale; and that, even if the appellant qualified as an adjoining owner, it would be inequitable to award him the land because they are a part of the range heretofore used by the applicants and their predecessors in interest.

On August 9, 1956, the appellant filed a request for hearing and alleged that the applicants' answer places certain facts in issue. He also certified that on August 7, 1956, Thomas and Billie Watson were served with a copy of his request for hearing, and attached a Receipt for Registered Article No. 3091, dated August 7, 1956, disclosing addressee as: Thomas and Billie Watson, St. Helena, California.

On September 10, 1956, the applicants filed an answer to the appellant's request for hearing. A return receipt request indicating service of a copy of said answer upon the appellant on September 8, 1956, was filed on September 17, 1956.

The Department's Rules of Practice (43 CFR, Part 221) were revised as of May 1, 1956, and govern decisions of the Bureau of Land Management on and after that date. (21 F.R. 1860, 1865). They provide that a person who wishes to appeal to the Director must file a notice of appeal within 30 days of the decision he is appealing from, and further provides in part:

> "Sec. 221.4 Service of notice of appeal and of other documents. The appellant must serve a copy of the notice of appeal and of any statements of reasons, written arguments or briefs on each adverse party named in the decision appealed from, in the manner prescribed in Sec. 221.95, not later than 15 days after filing of the document. Failure to serve notice within the time required will subject the appeal to summary dismissal as provided in Sec. 221.98. Proof of such service as required by Sec. 221.95 must be filed in the office of the Director within 15 days after service unless filed with the notice of appeal.

* * * * * * * * * *

"Sec. 221.95 Service. (a) Wherever the regulations in this part require that a copy of a document be served upon a person, service may be made by delivering the copy personally to him or by sending the document by registered or certified mail, return receipt requested, to his address of record in the Bureau. * * *

"(b) * * * Service by registered or certified mail may be proved by a post-office return receipt showing that the document was delivered at the person's record address or showing that the document could not be delivered to such person at his record address because he had moved therefrom without leaving a forwarding address or because delivery was refused at that address or because no such address exists. Proof of service of a copy of a document should be filed in the same office in which the document is filed except that proof of service of notice of appeal should be filed in the office of the officer to whom the appeal is made, if proof of service is filed later than the notice of appeal. * * *"

"Sec. 221.98 Summary Dismissal. An appeal to the Director or to the Secretary will be subject to summary dismissal by the officer to whom it is made for any of the following causes:

* * * * * * * * * *

"(b) If the notice of appeal is not served upon adverse parties within the time required; * * *"

Under the revised regulations the appellant was required to serve notice of appeal on the adverse party and submit evidence of notice of service not later than 15 days after filing his appeal. The proper evidence of service of notice of appeal upon the adverse party by certified or registered mail is the return receipt requested. The appellant's submission of a Receipt for Registered Article is not satisfactory evidence of notice of service as required by regulations. Neither does it indicate that service was made nor establish when service was made. At no time was proper evidence in the record disclosing when the Watsons were served with notice of the appeal. Failing satisfactory proof of service of notice of appeal, the appeal is subject to summary dismissal. Carl V. Giem, Harvey Bros., Intervenors, A-27299 (May 31, 1956); Lee R. Ormiston, A-27355 (May 14, 1956); A. R. Spikes, A-27000 (February 20, 1956). Accordingly, the appeal is dismissed.

Even if the procedural defect were not present, there does not appear to be any basis for changing the rejection of the appellant's preference-right claim.

Departmental regulation 43 CFR 250.11(b) provides, under the provisions of the public sale law, that owners of contiguous lands have a preference-right, "for a period of 30 days after the highest bid has been received, to purchase the land offered for sale at the highest bid price * * *," and, further, that:

> "(1)(i) A preference-right to purchase must be supported by proof of the claimant's ownership of the whole title to the contiguous land (that is, he must show that he had the whole title in fee), and must be accompanied by the purchase price of the land.
>
> "(ii) Failure to submit to the land office satisfactory proof during the 30-day period after the highest bid has been received will cause the preference-right to be lost as to the particular public sale. Such proof must consist of (a) a certificate of the local recorder of deeds, or (b) an abstract of title or a certificate of title prepared and certified by a title company or by an abstracting company, showing that the claimant owns adjoining land in fee simple at or after the date of the sale. However, if the preference-right claimant does not own adjoining land at the close of the preference-right period, his preference-right claim may be lost. * * *"

The evidence submitted by the appellant within the preference-right period admittedly describes land contiguous to the land offered for sale and indicates that he would acquire title to said property when the sale was approved and patent issued by the California State Lands Commission. Nothing submitted within the required period discloses that title to the contiguous land had vested in the appellant at the date of the sale or within the preference-right period. Moreover, had the statement of the Supervising Land Title Abstractor, California State Lands Commission, revealed that title had vested in the appellant, it would have been insufficient proof of ownership under the provisions of the regulation. The regulation is specific as to the manner of proving ownership of adjoining land, and the description of such proofs in the regulation is preceded by the word "must", a word of limitation, thus excluding or prohibiting any other type of proof of ownership of contiguous land. The rejection of Mr. Manuel's preference-right claim to purchase the land described in his bid was correct because of his failure to submit within 30 days after the date of the sale satisfactory evidence of his ownership of contiguous land at or after date of sale. Fred and Mildred M. Bohen et al., 63 I.D. 65. No matter how compelling the reasons for delay in vesting of title to contiguous land, compliance with the regulation is mandatory.

The applicants' claim will now be considered.

The certificate of ownership submitted on April 6, 1956, by the applicants, Thomas and Billie Watson, obtained from the county assessor as evidence of ownership of adjoining lands, was not satisfactory proof of ownership of such property to qualify as a preference-right claimant under the provisions of 43 CFR 250.11(b)(1)(ii) for the reason that it was not one of the satisfactory proofs described therein. As the date of public sale was March 9, 1956, the 30-day preference-right period extended through Sunday April 8, 1956. Satisfactory proof of the Watsons' ownership of adjoining land over the signature and seal of the county recorder was received the next business day April 9, 1956. The Department has long followed the general rule that where the last day of a period within which a filing is required to be made falls on Sunday, or a legal holiday, such time shall be held to include the next following business day. R. R. Rousseau, 47 L.D. 590.

The applicants, Thomas and Billie Watson, qualified themselves as preference-right bidders. The manager's decision declaring them the purchasers was proper and is affirmed.

Since the factual data necessary to properly determine the issues on appeal are based upon matters of official records, the appellant's request for a hearing under 43 CFR 221.6 of the Rules of Practice is denied.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this Office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35 inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

In the event of an appeal, the adverse parties to be served with notice thereof are:

Thomas and Billie Watson
St. Helena, California

Edward Woozley
Director

Attachment

DISTRIBUTION:

Mr. Jess R. Manuel (Registered Mail)
Gilmore & Gilmore, Agents for Mr. and Mrs. Watson (Registered Mail)
Mr. Thomas and Mrs. Billie Watson (Regular Mail)
Hon. Hubert B. Scudder, Member of Congress
Lands Staff Officer

WHW
Appeals List No. 1

no appeal to Sec.

In reply refer to:

Los Angeles 0135641
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Registered Mail
Return Receipt Requested

DECISION

March 19, 1957

C. Frederick Haggerty : Public Sale Application (2nd Proviso)

Manager's Decision Reversed
Case Remanded for Further Action

C. Frederick Haggerty has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated Sept. 9, 1955, rejecting his public sale application, under the provisions of Section 2455 Revised Statutes, as amended (43 USC 1952 ed., sec. 1171). The grounds for rejection were (1) that the land applied for is not isolated, and (2) the fee land claimed is within Desert Land Entry Los Angeles 0107143, for which patent has not been issued.

The appellant's application states that it was for lands which are mountainous or too rough for cultivation. It further states that the character of the lands is "sandy, rough and hilly." Appellant did not claim ownership in fee of adjoining land, but stated that he is the holder of a valid entry, Los Angeles 0107143 on adjoining land. The appeal referred to the fact that the application was for rough and mountainous lands rather than an isolated tract, and stated that the holder of a valid entry on adjoining land is sufficient to satisfy the requirements of 43 CFR 250.7 with respect to qualifications of applicants for rough and mountainous lands.

Since the application was for lands alleged to be mountainous or too rough for cultivation, the case is governed by the Second Proviso of Section 2455, Revised Statutes, supra., which provides in pertinent part as follows:

> "...That any legal subdivisions of the public lands, not exceeding seven hundred and sixty acres, the greater part which is mountainous or too rough for cultivation, may,

> in the discretion of the said Secretary, be ordered into the market and sold pursuant to this section upon the application of any person who owns land or holds a valid entry of lands adjoining such tract, regardless of the fact that such tract may not be isolated or disconnected within the meaning of this section:..." (emphasis added)

The tract need not be isolated to be offered for public sale under the quoted proviso, and the appellant need only hold a valid entry on adjoining land to qualify in that respect as an applicant.

Regulation 43 CFR 250.7 (b) provides that in connection with the entry claimed to be held on adjoining land, the public sale applicant must have met the requirements of the law. Such regulation has not been interpreted to require that the applicant have completed all requirements which are necessary for the issuance of a patent. A regulation to the same effect, (43 L.D. 485, 490 (1915)), was in force when the case of Boyd v. Hopps, 47 L.D. 1 (1919) was considered. In the Boyd case, a desert land entry on adjoining land satisfied the above-noted requirement even though the entry had not been carried to final proof, and the sale was validly held pursuant to the application even though after the date of the application and before the date of the sale the desert land entry was cancelled.

The record shows that on May 7, 1954, the appellant made desert land entry Los Angeles 0107143, for the $N\frac{1}{2}NW\frac{1}{4}$ Sec. 21, T. 15 S, R. 8 E., S.B.M., California. This tract is contigous to the lands sought under his public sale application. In accordance with the Boyd case, supra, it is concluded that the appellant, as holder of an allowed desert land entry, was qualified for the purpose of applying for the public sale of the lands involved in the appeal. The decision of the Manager rejecting the application on the grounds that the lands are not isolated and that the appellant's interest in the adjoining land covered by his desert land entry did not qualify him to file the public sale application, was in error and is hereby reversed. The case is remanded for appropriate classification of the lands. If the lands applied for are ordered into public sale, the appellant would not be a preference-right bidder under 43 CFR 250.11 unless at the time of asserting a preference right he has acquired the whole title, i.e., the patent, to his desert land entry.

For the Director:

Distribution:

C. Frederick Haggerty (Regular Mail)
Lands Staff Officer
Appeals List #1
BF

In reply refer to:

Sacramento 044780
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 1, 1957.

DECISION

Arthur H. and Sadie Tosten	:	Public Sale Application (Isolated Tract)

Manager's Decision Reversed
Case Remanded for Further Action

Arthur H. and Sadie Tosten have appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Sacramento, California, dated October 25, 1951, rejecting their application under Section 2455 Revised Statutes, as amended, (43 U.S.C., 1952 ed., sec. 1171) for the public sale of the SE$\frac{1}{4}$SE$\frac{1}{4}$ sec. 20, T. 3 S., R. 3 E., H.M., California, as an isolated tract. The application was rejected because the tract contained merchantable timber and was classified as more suitable for retention in public ownership for management of the timber resources thereon, than for other purposes.

The appellants show that the tract sought is completely surrounded by property owned by them in fee. They contend that ownership of the tract is necessary to prevent trespass upon their property; that the land is not suitable for cultivation and if acquired by them would be used in their stockraising operations.

An approved report of field examination of October 24, 1951, indicated that the subject land was administratively included as a single tract with other lands a short distance away, under a program for sustained timber production. Based upon such report, the tract was classified as timberland that should be retained in public ownership.

The record now indicates that although the subject tract has a small amount of merchantable timber, that it is not needed by the Government for forest management purposes or for purposes of administration of other lands. Further, the Bureau's State Supervisor recently reported that neither his office nor the Sacramento

District Forestry Office has any objection to the disposal of the tract at public sale.

Accordingly, the decision of the Manager is reversed and the case is remanded to the Manager through the Bureau's State Supervisor at Sacramento, California, for further processing of the appellant's application if all else is regular.

For the Director

A. H. Furr

DISTRIBUTION
Arthur H. and Sadie Tosten (Regular Mail)
Lands Staff Officer
Appeals List No. 1
BF

14937

In reply refer to:

Los Angeles 077942
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 5, 1957

Certified Mail

Return Receipt Requested

DECISION

Frank David Butler : Public Sale

Manager's Decision Affirmed

Frank David Butler has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office, Los Angeles, California, dated November 1, 1953, wherein sec. 22, T. 9 S., R. 12 E., S.B.M., California, was divided between appellant and Mr. and Mrs. Albert M. Ashman after both parties had asserted their preference rights to sec. 22 on the basis of adjoining land ownership.

Sec. 22 was offered for sale at public sale as an isolated tract under section 2455 of the Revised Statutes, as amended, 43 U.S.C. 1952 ed. sec. 1171, and after the two preference right claimants had been allowed 30 days in which to agree upon a division of the land, the Manager, under Order No. 473 and Regional Order No. 1, Sec. 2.70, divided the land as follows: appellant who is the owner of the S½SE¼SE¼S½ of sec. 15 was awarded the N½ of sec. 22 and Mr. and Mrs. Ashman who are owners of the S½ sec. 23 were awarded the S½ sec. 22.

It appears from the record that a highway passes through the SW¼, SE¼ and NE¼ of sec. 22 and that to the north of the highway and parallel with it is a railroad right of way. It is appellant's contention that the location of the railroad north of the highway isolates the major portion of sec. 22 from the highway. He has offered as a solution to his problem an award whereby he would receive the N½SE¼, NE¼, and the N½N½, and Mr. and Mrs. Ashman would receive the remaining land. If the award were made as requested by appellant, the only additional land south of the highway which he would receive is the N½SE¼. This would not solve his problem of access to the land in the N½ sec. 22 for the reason that the railroad right of way still remains north of the highway.

As an additional reason for his suggested division of the land, appellant states that he is interested in "a contiguous connection between Sections 16, 14 and 26 including access to and along the south side of highway 111, (of considerable area)." As to a connection between sections 14, 16 and 26 it is pointed out that they only corner on section 22 and as to the "considerable area" south of the highway no reason is given for appellant's interest. To give appellant the N½SE¼ sec. 22 does not give him access to sec. 26 and to give appellant all of the SE¼ sec. 22 would entirely sever the land owned by Mr. and Mrs. Ashman in sec. 23 from the remaining land in sec. 22.

As for their reason for an interest in the S½ sec. 22 Mr. and Mrs. Ashman have stated that there is water on that tract and that there is none on their land in sec. 23.

Appellant has not shown a justification for an award of the lands in a manner other than that decided upon by the Manager. The Manager's decision accordingly is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the rules of practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

In the event of an appeal the adverse party to be served with notice thereof is: Mr. and Mrs. A. M. Ashman, 116 5th Street, Seal Beach 2, California.

For the Director
John B.

Attachment

DISTRIBUTION:

Mr. Frank David Buhler (Certified Mail)
Mr. and Mrs. A. M. Ashman (Regular Mail)
Lands Staff Officer
Appeals List No. 1
CCS

appealed to Sec
affirmed A-27552 2/7/58

In reply refer to:

Los Angeles 0105552
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 29, 1957

Certified Mail
Return Receipt Requested

DECISION

Earl L. Livermore : Public Sale Application

Manager's Decision Affirmed

Earl L. Livermore has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated June 24, 1953 rejecting his application for public sale of the E½SE¼ sec. 14, T. 5 S., R. 4 W., SBM, California, under section 2455 Revised Statutes, as amended (43 U.S.C., 1952 ed., sec. 1171). The application was rejected because the lands sought were withdrawn by Executive Order of March 30, 1922 and embraced in Reservoir Site Reserve No. 15.

The appellant states that he desires to purchase the lands in order to add to his adjoining 160-acre ranch and to put the lands to more productive use.

The lands embraced in the appellant's application are within an area withdrawn by Executive Order of March 30, 1922. Inasmuch as the lands sought were withdrawn from entry and reserved for reservoir or irrigation purposes under the Act of March 3, 1891 (43 U.S.C., 1952 ed., secs. 946-949), the appellant's application must be rejected. 43 CFR 101.7(b). Nor may the appellant's application be held in suspense until such time as the withdrawl is revoked and the land opened to entry. Effie Ellen Cox, A-27175 (December 12, 1955). The Manager's decision is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

Simultaneously with the filing of this appeal, Mr. Livermore, petitioned for the revocation of so much of the withdrawal as pertains to the land he seeks to acquire. The disposition of his petition for restoration will be made the subject of a subsequent communication after this decision becomes final.

For the Director:

A. H. Fr

Attachment

DISTRIBUTION:

Earl L. Livermore (Certified Mail)
Lands Staff Officer
Appeals List No. 1
BF

In reply refer to:
Sacramento 045756
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 2, 1957

DECISION

Vivian Staley : Public Sale

Decision of Manager Reversed

Vivian Staley has appealed 1/ to the Director, Bureau of Land Management from a decision of the Land Office Manager, Sacramento, California dated May 18, 1953 which rejected her public sale application, Sacramento 045756. The application was filed in accordance with section 2455, Revised Statutes, as amended (43 U.S.C., Sec. 1171); 43 CFR 250.7, 1954 ed. 2/ The application was rejected because the land sought together with other lands in the area contains merchantable timber susceptible to management in a single unit for sustained timber production.

The record shows that the land was examined by a forester of this Bureau in April, 1953. The report of field examination states that approximately 26 acres of the land are timbered and determined by a tree count cruise to support 320 MBM of timber, that an equal volume of redwood timber was harvested in the past 10 to 15 years, and that the land is primarily valuable for timber production. It was on the basis of this record that the public sale application was rejected. However, a subsequent report based on further study states that timber management plans for the area have now been completed and the subject land is deemed suitable for disposal, and the State Supervisor has advised that more recently formulated timber management plans permit the disposal of the land applied for.

Accordingly, the Manager's decision of May 18, 1953 is hereby reversed and the case remanded to the Manager through the State Supervisor at Sacramento for further action not inconsistent with this decision.

For the Director:

a. H.

Attachment
DISTRIBUTION:
SS(Sacramento)
LO(Sacramento)
Lands Staff Officer
Appeals List No. 1
CFG
Vivian Staley (Regular Mail)

1/ The appeal record was received by the Director's office on January 30, 1956.

2/ Sale as mountainous or too rough for cultivation.

21592

In Reply Refere to:

Los Angeles 0135700
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 12, 1957

DECISION

Anders C. Nelson : Public Sale

Appeal Dismissed; Case Closed

Anders C. Nelson appealed to the Director, Bureau of Land Management from a decision of the Manager, Land Office, Los Angeles, California, dated September 12, 1955, rejecting his application for public sale, Los Angeles 0135700, made under section 2455, Revised Statutes, as amended (43 U.S.C. sec. 1171). The application, embracing the $N\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}SW\frac{1}{4}$, sec. 36, T. 4 S., R. 4 E., S.B.M., California, was rejected because the land applied for had been classified for disposal under the Small Tract Act of June 1, 1938, as amended (43 U.S.C. sec. 682a) by Order California No. 86 dated August 27, 1948, and was therefore not subject to disposal under the public sale law.

Since the tract book record shows that the lands embraced in the appeal were patented to the appellant under the Small Tract Act, *supra*, patent No. 1159748 dated May 16, 1956, Los Angeles 0137077, the appeal is now moot. The appeal is therefore dismissed and the case is closed.

For the Director:
John B. Piccolo

DISTRIBUTION:

Mr. Anders C. Nelson (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

In reply refer to:

Los Angeles 0134353
5.04g
August 27, 1957

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

Imperial Irrigation District : Public Sale Application

Manager's Decision Affirmed

Imperial Irrigation District, a political subdivision of the State of California, has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated June 27, 1955, rejecting its application for public sale of Lots 1, 2, 3, and the $E\frac{1}{2}NW\frac{1}{4}$ sec. 25, T. 16 S., R. 21 E., S.B.M., California (subject to existing easements and rights of way), under the second proviso of the Public Sale Act, as amended (43 U.S.C., 1952 ed., sec. 1171). The application was rejected because the lands were withdrawn from disposal on February 3, 1903, under the Reclamation Act of June 7, 1902 (43 U.S.C., sec. 371, et seq.), and were also withdrawn by Executive Order of January 9, 1884, for an Indian Reservation.

The appellant contends that the "Agreement with the Yuma Indians in California" of December 4, 1893, confirmed by sec. 17 of the act of Congress, approved August 15, 1894 (28 Stat. 332), provided that the lands sought, among other lands, were ceded to the United States by the Indians. It is contended that, by the terms of the Indian Treaty and the act of August 15, 1894, the lands became part of the public domain, open to settlement and sale under the provisions of the general land laws of the United States.

The lands of the Yuma Indian Reservation were created and reserved from further appropriation under the general land laws by the Executive Orders of July 6, 1883, and January 9, 1884. These Orders were implemented by section 17 of the act of August 15, 1894. That Act confirmed the Agreement with the Indians and provided, among other things, that title to the irrigable lands in the Reservation would remain in the Indians and/or be disposed of for their benefit in the manner specified in the act. Article VI of the Agreement provided that "All lands upon said reservation that can not be irrigated are to be open to settlement under the general land laws of the United States." The ratifying act (section 17 of the act of August 15, 1894 (28 Stat. 332, 336) provides "That all of the lands ceded by said Agreement which are not susceptible of irrigation shall become a part of the public domain, and shall be opened to settlement and sale by proclamation of the President of the United States, and be subject to disposal under the provisions of the general land laws." (Emphasis added).

It is true that the lands applied for are non-irrigable and that they are owned by the United States. However, at no time have the non-irrigable lands been opened to settlement and sale by proclamation of the President, as provided in the above-quoted paragraph of the act of August 15, 1894. Congress intended that the non-irrigable lands should not become a part of the public domain until they are made subject to settlement and disposition under the general land laws by Presidential proclamation. (Solicitor's Opinion M-28198, January 8, 1936). Not being part of the public domain, the lands applied for are not subject to disposal under the public sale law.

The records further show that the lands applied for are included in a Reclamation Withdrawal of February 6, 1903. The Department has consistently held that lands affected by a withdrawal are not subject to disposition under the public land laws. Alma Everett Morris, Jr., et al., A-27235 (December 12, 1955); Emily Juanita Miller, A-26966 (September 20, 1954); W. C. Dalzell, A-26346 (March 28, 1952); 43 CFR 230.12.

The Manager's decision is, accordingly, affirmed.

Imperial Irrigation District is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the notice of appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

The Imperial Irrigation District represented that it owned, in fee, all of the lands in the fractional S½ of section 25. The records of this Bureau fail to show that Lot 4 (fractional SE¼ sec. 25) has ever been patented by the United States.

For the Director:

A. H.

Attachment

DISTRIBUTION:

Imperial Irrigation District (Certified Mail)--Attn: J. E. Welch
Lands Staff Officer
Appeals List No. 1
Bureau of Reclamation, Washington 25, D. C.
BF

In reply refer to:

Sacramento 047398
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 3, 1957

Certified Mail
Return Receipt Requested

DECISION

Daniel George Hunter : Public Sale
Hazel Isabella Hunter :

Decision of Manager Affirmed

Mr. and Mrs. Daniel G. Hunter have appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Sacramento, California, Land Office rejecting their application for the public sale of a 40-acre tract adjoining their land. The decision of the Manager stated that the land, in Township 2 South, Range 2 West, Humboldt Meridian, California, was withdrawn by an Executive Order, pursuant to the Act of June 25, 1910, as amended by the Act of August 24, 1912, and that it was not therefore subject to disposal.

Section 1 of the Act of June 25, 1910, as amended (43 U.S.C., 1952 ed., sec. 141), authorizes the President, in his discretion, temporarily to "withdraw from settlement, location, sale or entry any of the public lands of the United States...for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress."

Executive Order No. 5237, dated December 10, 1929, reads in part:

> "Under authority of the Act of Congress approved June 25, 1910 (36 Stat. 847) as amended by the Act of August 24, 1912 (37 Stat. 497) and subject to the conditions therein expressed, it is hereby ordered that the unreserved public lands within the following listed townships be, and the same are hereby temporarily withdrawn for classification, subject to prior valid rights:
>
> "Humboldt Meridian
>
> ....
>
> In Tps. 1, 2 and 3 S., R. 2 W;
>
> ....
>
> "This order shall continue in full force and effect unless and until revoked by the President or by act of Congress."

This Executive Order has not been revoked. Land included in a withdrawal is not subject to public sale until the withdrawal is revoked and the land has been restored to entry. Cf. Charles W. Trounson, 60 I.D. 182 (1948); Edwin L. Doheny, et al., A-26868, et al. (July 13, 1954). Because the land embraced in the appellants' public sale application is within the area withdrawn by Executive Order No. 5237, it is not subject to disposition, and the rejection of the appellants' application was proper. Effie Ellen Cox, A-27175 (December 12, 1955). An application for withdrawn lands may not be held in suspense until the restoration of the land to entry or disposal. Jack D. Watts, A-26488 (November 18, 1952); Roy Leonard Wilbur, et al., 61 I.D. 157 (1953).

The record shows that consideration is being given to the restoration of the lands to entry which are presently withdrawn by Executive Order No. 5237. If and when the lands are restored, no preference right thereto will inure to the appellants by virtue of the instant application. In the event of the restoration of the lands, they will be subject to 90-day preference right period for veterans under the homestead, desert land and small tract laws, pursuant to the Act of September 27, 1944, as amended. 43 U.S.C., 1952 ed., Supp. IV, secs. 279-284.

The decision of the Manager is therefore affirmed.

Mr. and Mrs. Hunter are allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

Attachment

DISTRIBUTION:
Mr. and Mrs. Daniel G. Hunter, Petrolia, California (Certified Mail)
Lands Staff Officer
Appeals List No. 1
MG

24844

Rules of Prac — 9

appeal to Sec

Affirmed A-27648 - 4/8/58

In reply refer to:

Los Angeles 0142971
088528
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 2, 1958

Certified Mail
Return Receipt Requested

DECISION

Orian F. Campbell	:	Public Sale
Gladys C. Campbell	:	

Appeal Dismissed

Orian F. Campbell has appealed to the Director, Bureau of Land Management, from the decision of the Manager of the Land Office, Los Angeles, California, dated August 14, 1957, which rejected Mr. and Mrs. Campbell's application for a public sale, Los Angeles 0142971, made under Section 2455, Revised Statutes, as amended (43 U.S.C., 1952 ed., sec. 1171). The application, was rejected because the land applied for is included in private exchange application, Los Angeles 088528, filed by Carl G. Allen. The decision of August 14, 1957, also stated that the exchange had been completed and patent was to issue therefor.

The Manager allowed Mr and Mrs. Campbell a right of appeal to the Director of the Bureau of Land Management, stating that compliance was required with sections 221.1 to 221.5, inclusive, and with other pertinent sections of the rules of practice. 43 CFR, 1956 Supp., Part 221. An information sheet containing pertinent provisions of the rules of practice was sent to the appellant. Allen was named as an adverse party in the decision.

Section 221.4 of the rules of practice reads as follows:

> "Service of notice of appeal and of other documents. The appellant must serve a copy of the notice of appeal and of any statement of reasons, written arguments or briefs on each adverse party named in the decision appealed from, in the manner prescribed in sec. 221.95, not later than 15 days after filing the document. Failure to serve within the time required will subject the appeal to summary dismissal as provided in 221.98. Proof of such service as required by sec. 221.95 must be filed in the office of the Director within 15 days after service unless filed with the notice of appeal."

Section 221.98 of the rules of practice provides in part:

> "Summary dismissal. An appeal to the Director * * * will be subject to summary dismissal * * * for any of the following causes:
>
> (b) If the notice of appeal is not served upon adverse parties within the time required."

The record shows that on September 18, 1957, a notice of appeal containing a statement of the reasons for the appeal was received in the Land Office from Mr. Campbell. The notice of appeal did not contain any indication that a copy of the notice of appeal had been served on the adverse party, Carl G. Allen, named in the Manager's decision. The record shows that no proof of service on the adverse party has been filed.

In the absence of evidence showing that the appellant served the adverse party with a copy of the notice of appeal, as required by the rules of practice, no extension of time for submission of such evidence having been requested or granted under 43 CFR, 1956 Supp., sec. 221.97, the appeal is subject to summary dismissal in accordance with sec. 221.98 of the rules of practice, supra. The Department has consistently ruled that where an appellant does not serve a copy of the notice of appeal on the adverse party, as required by the regulations, the appeal must be dismissed. Cf. Charles Waldon Folsom, A-27428 (January 31, 1957); Mamie E. White, A-27231 (January 7, 1957); Marion F. Jensen et al., 63 I.D. 71 (1956).

The appeal is therefore dismissed.

Mr. Orian F. Campbell is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp, Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Mr. Orian F. Campbell, then he must serve a copy of all documents on the adverse party, Mr. Carl G. Allen of 3275 Wilshire Boulevard, Los Angeles, California, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C. in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

For the Director:

John B. Piccolo

Attachment

DISTRIBUTION:

Mr. Orian F. Campbell (Certified Mail)
Mr. Carl G. Allen (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

In reply refer to:

Los Angeles 093920
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 11, 1958

Certified Mail
Return Receipt Requested

DECISION

Stanley R. Dennis : Public Sale

Appeal Dismissed

Mr. Stanley R. Dennis has appealed to the Director of the Bureau of Land Management from a decision of the Manager of the Los Angeles Land Office, dated July 2, 1957, vacating an earlier decision declaring Mr. Dennis to be the high bidder for a certain tract of land offered at public sale.

Mr. Dennis' notice of appeal was filed on August 5, 1957, but was not accompanied by a statement of reasons.

Section 221.3 of the rules of practice provides that:

> "If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in 221.98."

A statement of reasons was not filed with the Director within the time allowed, nor has such a statement ever been filed. The appeal is therefore dismissed. Wilbert Phillips, Fletcher G. Edwards, 64 I.D. 385 (1957).

When this decision becomes final, the land may again be offered at public sale, and the appellant may again have the opportunity to bid for it.

Mr. Dennis is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp, Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

A. H.

Attachment

DISTRIBUTION:

Mr. Stanley R. Dennis, (Certified Mail)
Lands Staff Officer
Appeals List No. 1
MG

In reply refer to:
Sacramento 052495
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 19, 1958

Certified Mail
Return Receipt Requested

DECISION

Kay Shadd : Public Sale Application

Decision of Manager Affirmed

Kay Shadd has filed an appeal to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Sacramento, California, dated August 15, 1956, rejecting public sale application, Sacramento 052495, filed under the provisions of section 2455, Revised Statutes, as amended (43 U.S.C., 1952 ed., sec. 1171), and the regulations thereunder (43 CFR part 250). The rejection was based on the finding that the land embraced in the application was withdrawn from all forms of entry under the public land laws by a Proclamation No. 2635 for the Plumas National Forest and is therefore not subject to disposal under the public land laws.

The appellant does not dispute the Manager's reason for rejection of the application but sets forth his reasons for appealing the Manager's decision as follows:

1. "The land is isolated from the national forest and almost entirely surrounded by lands under private ownership. This isolation would make utilization of the land for national forest recreational use difficult.
2. "The land does not contain any valuable springs or rivers.
3. "The land does not contain enough timber to make it valuable for national forest use.
4. "The relative isolation from roads and cities, combined with the altitude, makes it an ideal spot to have as a summer home."

The acts of February 20, 1925 (43 Stat. 952), June 22, 1938 (52 Stat. 838); and June 5, 1942 (56 Stat. 311) authorized the addition to the Plumas National Forest of public lands within certain areas in the State of California. The record shows that pursuant to these acts the land involved in the subject application together with other public lands found to be chiefly valuable for national forest purposes, was added to and reserved as part of the Plumas National Forest under a proclamation by the President dated January 13, 1945 (No. 2635).1/

Land which is withdrawn or reserved is not subject to disposition under the public land laws while the land remains in that status2/ and an application for such land must be rejected. Keith Specking et al v. Charles S. Carter, A-26190 (July 24, 1951); Edwin L. Doheny et al, A-26868, A-26897 (July 13, 1954); Frank Noriega, A-26916 (August 3, 1943).

The Manager's action in rejecting the application was therefore proper and his decision is affirmed.

Since the appellant has manifested his desire to use the land as a summer home, he may wish to contact the Forest Supervisor of the Plumas National Forest with a view to applying for a permit therefor.

Mr. Shadd is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the

---

1/ By this proclamation, Executive Orders No. 4203 of April 14, 1925 and No. 6910 of November 26, 1934, as amended, which withdrew certain public lands for classification, were revoked in so far as they affected any of the lands described in the proclamation.

2/ The Act of June 25, 1910 (43 U.S.C., 1952 ed., sec. 141) authorizes the President in his discretion to temporarily "withdraw from settlement, selection, sale or entry any of the public lands of the United States ... and reserve the same for ... public purposes to be specified in the orders of withdrawal, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress."

Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp, Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director

A. H. Tarr.

Attachment

DISTRIBUTION
Mr. Kay Shadd (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
MAG

In reply refer to:

Sacramento 047051
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 21, 1958

Certified Mail
Return Receipt Requested

DECISION

G. Walter and Avis E. Spencer : Public Sale Application

Decision of the Manager Reversed
Case Remanded

G. Walter and Avis E. Spencer have appealed to the Director, Bureau of Land Management, from a decision of the Manager of the Land Office, Sacramento, California, dated August 14, 1956, which rejected their public sale application Sacramento 047051 in part. It was rejected as to the SE$\frac{1}{4}$SE$\frac{1}{4}$ sec. 1, T. 22 N., R. 12 W., M.D.M., California, because the land was included in a proposed reclamation withdrawal.

The Manager erred, as the public sale application should have been suspended until final action had been taken on the withdrawal application, similar to the procedure embodied in 43 CFR 1954 ed., 295.10(a). 1/ If, however, after referring the matter to the attention of the Bureau of Reclamation that Bureau should report that the land is no longer necessary for reclamation purposes, the Manager should proceed with the sale, all else being regular. Accordingly, the decision of the Manager is reversed and the case remanded to him, through the Bureau's State Supervisor at Sacramento, for appropriate action in accordance with the views expressed in this decision.

For the Director:
John B. Piccolo

DISTRIBUTION:
SO (California) with case record Sacramento 047051
Messrs. G. Walter and Avis E. Spencer (Ordinary Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

1/ This regulation has been superseded by 43 CFR 295.11 (Circular No. 1982) published in the Federal Register of August 17, 1957.

In reply refer to:

Sacramento 040741
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 26, 1958

DECISION

Harry T. Moore : Public Sale

Manager's Decision Reversed
Case Remanded

Harry T. Moore has appealed to the Director, Bureau of Land Management, from a decision 1/ of the Manager of the Land Office, Sacramento, California, which rejected his public sale application, Sacramento 040741, filed under the second proviso of Section 2455 of the Revised Statutes, as amended (43 U.S.C., 1952 ed., sec. 1171). The application was rejected because the land sought, together with other land in the area, contains merchantable timber susceptible to management in a single unit for continuous timber production.

The record shows that the land was examined by a forester of this Bureau who found that the land sought supports a stand of merchantable timber containing approximately 1,200 M board feet, and recommended that the land be retained in public ownership for management of the timber resources thereon. It was on the basis of this report that the public sale application was rejected. A subsequent report based on further study shows that at the present time the lands in issue are no longer included in any contemplated continuous yield management unit.

Accordingly, the Manager's decision is hereby reversed and the case remanded to the Manager of the Land Office, through the State Supervisor at Sacramento, California, for further appropriate action.

For the Director:

1/ The appeal record was received by the Director's office on December 13, 1957.

DISTRIBUTION:
SO (Sacramento) with case record Sacramento 040741
Mr. Harry T. Moore (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

In reply refer to:

Los Angeles 0140495
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 6, 1958

Certified Mail
Return Receipt Requested

DECISION

Kenneth Edward Keillor ' Public Sale Application

Decision of Manager Affirmed

Kenneth E. Keillor has appealed to the Director of the Bureau of Land Management from a decision of the Manager of the Land Office at Los Angeles, California, dated June 4, 1956, which rejected his application for public sale for the reason that the land sought was withdrawn from all forms of entry under the public land laws by Public Land Order No. 548 of January 26, 1949.

As shown by the record, the land in issue is withdrawn for use in connection with the construction of the Isabella Reservoir and Dam Site Project on the Kern River under supervision of the Department of the Army. As there has been no restoration of this land to disposal it is not subject to application under the public land laws. It is well established that lands affected by a withdrawal are not subject to disposition under the public land laws and an application for withdrawn land must be rejected. Floyd A. Woodward, A-25967 (December 18, 1950); Claude Johnson, Jr., A-25791 (April 7, 1950)

This decision is without prejudice to the appellant's making application for the land under applicable land laws in the event the land is restored to entry at some future time. The subject application, though, may not be held in suspense until the restoration of the land to entry or disposal and then considered as though filed immediately the land is restored. Effie Ellen Cox, A-27175 (December 12, 1955); Emily Juanita Miller, A-26966 (September 20, 1954); W. C. Dalzell, A-26346 (March 28, 1952); Lewis T. Cureton, A-25196 (March 8, 1948). Nor would the appellant gain any preference right to the land by virtue of having filed an application during the period of withdrawal. Guy C. Riddell A-24055 (January 24, 1946).

It is the settled rule that no rights are acquired by an application if, when it is made, the land sought is not subject to appropriation. John LaRay Hunt, Jr., v. State of Utah, A-24029 (May 16, 1945). If and when the land is restored, an application can then be made in accordance with the terms of the restoration order, which would afford veterans a preference right of application under the Act of September 27, 1944, as amended, 43 U.S.C., 1952 ed., Supp. IV, secs. 279-284).

The decision of the Manager is affirmed.

Mr. Keillor is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp, Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

A. H.

Attachment

DISTRIBUTION:

Mr. Kenneth E. Keillor (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
MAG

In reply refer to:

Los Angeles 0140217
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 12, 1958

Certified Mail
Return Receipt Requested

DECISION

Earl M. Price Virdie S. Price	:	Public Sale Application

Decision of the Manager Affirmed

Earl M. Price and Virdie S. Price have appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated June 12, 1956, which rejected their public sale application filed pursuant to section 2455 of the Revised Statutes as amended (43 U.S.C., 1952 ed., sec. 1171). The application was rejected because the lands sought had been withdrawn for the protection of the water supply of the City of Los Angeles, California, by Executive Order No. 6206 dated July 16, 1933, issued pursuant to the act of June 25, 1910, as amended by the act of August 24, 1912, 43 U.S.C., 1952 ed., secs. 141-142.

The withdrawal order of July 16, 1933, Executive Order 6206, provided for the withdrawal of the land from settlement, location, sale, or entry. The Land Office records indicate that the withdrawal is still in force and effect. The Department has consistently held that lands withdrawn from entry are not subject to appropriation under the public land laws. John C. Sanborn, et al., A-27218 (December 12, 1955); Claude Johnson, Jr., A-25791 (April 7, 1950); Charles W. Trounson, A-24853 (May 27, 1948).

The appellants may file a petition with the Manager of the Land Office at Los Angeles, California, for the restoration of the land from withdrawal, however their public sale application cannot be suspended pending a determination whether or not the land sought is still needed for the purposes for which it was withdrawn. Claude Johnson, Jr., A-25791 (April 7, 1950); D. Miller, A-24692, A-24800 (April 15, 1948). Neither would such petition vest in the applicant any preference right of entry in the event it is determined that the land can be restored to entry since the land would be opened subject to the provisions of section 4 of the act of September 27, 1944, as amended (43 U.S.C., 1952 ed., Supp. IV, sec. 282) which accords to honorably discharged veterans of World War II and the Korean Conflict and others a 90-day preference to file applications under the provisions of the homestead, desert land, or small tract laws.

The Manager's decision is hereby affirmed.

Earl M. Price and Virdie S. Price are allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellants of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Earl M. Price and Virdie S. Price then they must serve a copy of all documents on the adverse party, The Mayor, the City of Los Angeles, Los Angeles, California, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

For the Director:

A. H.

Attachment

DISTRIBUTION:

Earl M. Price and Virdie S. Price (Certified Mail)
Mayor, City of Los Angeles, Los Angeles, California (Regular Mail)
Lands Staff Officer
Appeals List No. 1
CFG

In reply refer to:

Sacramento 052438
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 7, 1958

Certified Mail
Return Receipt Requested

DECISION

Errol Aubrey Jones, et al. : Public Sale
:
:

Manager's Decision Affirmed

Errol Aubrey Jones, Cottrell Daniels and Maria Daniels have appealed from a decision of the Manager, Land Office, Sacramento, California, dated August 15, 1956, rejecting their application for a public sale filed pursuant to 43 U.S.C., 1952 ed., 1171. The Manager rejected the application because the tract is not isolated and the applicants do not own adjoining land.

The records show that there is public land adjoining the lots the appellants seek, and their application states that they do not own adjoining land.

The appellants assert that the lots named in their public sale application are the last remaining public land in that section, and, therefore, the same should be sold even though the lots adjoin public lands in another section.

The provisions of 43 CFR 250.6 contemplate that land which is completely surrounded by land in non-federal ownership or by land in permanent withdrawals and which does not embrace an aggregate area in excess of 1,520 acres, may be sold upon application, even though the applicant does not own adjoining land. However, the application for a public sale of land as an isolated tract must be rejected where the land is not completely so surrounded. Since the applicants do not own adjoining land, they cannot qualify as applicants under the second proviso of the law. This proviso contemplates that any legal subdivisions of public land, not exceeding 760 acres, the greater part of each subdivision being mountainous or too rough for cultivation, may be sold by the Secretary in his discretion upon the application of any person who owns land or holds a valid entry of lands adjoining such tract, regardless of whether the tract is isolated. See 43 CFR, 1954 ed., 250.7(c). Cf. Edwin Nivenski, A-27180 (November 14, 1955).

The appellants' position in effect is that the section line isolates the land sought on one side, the other three sides being bordered by privately owned land. There is no warrant for that position. The section line is a surveyed line on the ground which creates land subdivisions - it does not prevent contiguity.

Accordingly, the Manager's decision is affirmed.

Errol Aubrey Jones, Cottrell Daniels and Maria Daniels are allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

A. H.

Attachment

DISTRIBUTION:

Hon. Thomas H. Kuchel, U.S. Senator
Mr. Errol Aubrey Jones, Mr. Cottrell Daniels and Maria Daniels (Certified Mail)
Land Staff Officer
Appeals List No. 1
JHO'D

In reply refer to:

Sacramento 046917
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 28, 1958

DECISION

Guy A. Stapp : Public Sale

Manager's Decision Reversed
Case Remanded

Guy A. Stapp has appealed to the Director, from a decision of the Manager which rejected his public sale application because the land sought, together with other lands in the area, contains merchantable timber susceptible to management in a single unit for continuous timber production.

The record shows that a reexamination has been made and a new field report rendered which recommends that the land in issue be disposed of under the public sale law.

Accordingly, the Manager's decision is herby reversed, and the case remanded to the Manager, through the Bureau's State Supervisor at Sacramento, California, for further appropriate consideration.

For the Director:

A. H. Dunn

DISTRIBUTION:

Mr. Guy A. Stapp (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

37405

DEPT. OF INTERIOR
SACRAMENTO, CAL.

JUN 16 11 07 AM 1958

BUREAU OF
LAND MANAGEMENT

In reply refer to:
Sacramento 048559
048560
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 20, 1958

DECISION

Crane Mills, A Corporation : Public Sale Applications

Cases Remanded

Crane Mills, a corporation, has appealed to the Director from decisions of the Manager of the Land Office which rejected its public sale applications on the basis that the land contains valuable timber that is susceptible of management by this Bureau.

The record indicates that the land consists of two isolated tracts located about 2½ miles apart which supports a relatively even stand of coniferous timber. The tract in sec. 34 is accessible by an existing road and the land in Sec. 31 is one mile from a county road.

Though the field report states that the land is accessible and forms an integral part of the sustained yield management program of the South Unit of the Redding Forestry District, it is not clear from the record how the land fits into the larger management unit or the characteristics of the area embraced by the management unit.

It is our view that before a proper disposition of the land can be made in these cases that further consideration must be given to the land pattern of other timber land in the area, both public and private with which the tracts sought might be effectively managed; the location, type, and control of access roads to the management unit including proposed roads where appropriate; the feasibility of timber management on the public timber land within the unit; and watershed, recreation, wildlife and other multiple use characteristics of the land including any special features, if any, that would be incompatible with private ownership.

Therefore, the cases are remanded to the Manager through the Bureau's State Supervisor at Sacramento, California for further consideration of the proper classification of the land.

For the Director:

DISTRIBUTION:

Mr. Rawlins Coffman, Attorney for Crane Mills (Regular Mail)
Crane Mills Corporation (Regular Mail)
Appeals List No. 1
Lands Staff Officer (1)
CFG

37405

appeal to Sec

PUBLIC SALE * 5 Preference Right

One who fails to submit satisfactory evidence of his ownership of contiguous land within 30 days after the date of a public sale loses his preference right to purchase the land, even though such evidence was accepted by the Manager as establishing a valid preference right claim.

Alfred B. Corda et al., Sacramento 047523 (June 25, 1958)

LO

dismissed A-27814 10-16-58

In reply refer to:

Sacramento 047523
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 25, 1958

Certified Mail
Return Receipt Requested

DECISION

Alfred B. Corda et al.[1] : Public Sale
Clyde G. Fritsch :
:

Manager's Decision Reversed in Part

Mr. Alfred B. Corda et al., by their attorneys, have appealed to the Director, from a decision of the Manager, Land Office, Sacramento, California, dated June 21, 1956, awarding to Clyde G. Fritsch a portion of an isolated tract offered at public sale. Pursuant to public sale application, Sacramento 047523, filed by Alfred B. Corda et al., under Section 2455, Revised Statutes, as amended (43 U.S.C., 1952 ed., sec. 1171), a sale of the following tracts of public land was held on November 14, 1955:

T. 18 S., R. 5 E., M.D.M., California
sec. 17, S½S½;
sec. 18, SE¼SE¼
sec. 19, E½NE¼;
sec. 20, N½ and N½S½, containing 760 acres.

At the sale, conducted on November 14, 1955, Mr. Clyde G. Fritsch was declared the highest bidder for the entire tract, per his bid of $5.60 per acre, and he paid $4,256. Mr. Alfred B. Corda et al., met the high bid of Mr. Fritsch on November 14, 1955. The declaration of the purchaser was then suspended for the required 30 day preference period.

By decision of January 20, 1956, the Manager gave the bidders an opportunity to reach an agreement as to the division of the lands, but they were unable to do so. Consequently, by decision of June 21, 1956, the lands were divided as follows:

To Alfred B. Corda et al.

T. 18 S., R. 5 E., M.D.M.
sec. 17, S½SE¼; SE¼SW¼
sec. 20, NE¼, E½NW¼, N½SE¼, and NE¼SW¼
(480 acres)

---

[1] The other parties are: M. Frances Corda, Cecil and Catherine Bassetti Louis and Dora Dedini, Raphael and Clementine Pura.

To Clyde G. Fritsch

T. 18 S., R. 5 E., M.D.M.
Sec. 17, SW¼SW¼;
Sec. 18, SE¼SE¼
Sec. 19, E½NE¼
Sec. 20, W½NW¼ and NW¼SW¼.
(280 acres)

From this decision Mr. Corda et al., have appealed. The appellants, among other things, contend that the Manager erred in his interpretation of the regulations, 43 CFR 250.11(b)(3)(ii), with fatal results to the whole grazing plan the appellants had for the land; and that the Manager failed to consider the necessity the appellants had for the only water available. The appellants request a reversal of the decision as to the SW¼SW¼, sec. 17 and the NW¼SW¼, W½NW¼, sec. 20, and requested that this 160-acre tract be granted to appellants together with the other lands awarded to them by the Manager's decision.

The regulation, 43 CFR 250.11(b), provides in part as follows:

> "The owners of contiguous lands have a preference right, for a period of 30 days after the highest bid has been received, to purchase the land offered for sale at the highest bid price or at three times the appraised price if three times such appraised price is less than the highest bid price. * * *
>
> "(1)(i) A preference right to purchase must be supported by proof of the claimant's ownership of the whole title to the contiguous lands. * * *
>
> "(ii) Failure to submit to the land office satisfactory proof during the 30-day period after the highest bid has been received will cause the preference right to be lost as to the particular public sale. Such proof must consist of (a) a certificate of the local recorder of deeds, or (b) an abstract of title or a certificate of title prepared and certified by a title company or by an abstracting company, showing that the claimant owns adjoining land in fee simple at or after the date of the sale. * * *"

The Department has held that an owner of lands contiguous to land offered at public sale who fails to submit satisfactory evidence of his ownership of such lands within 30 days after the highest bid has been received loses his preference right to purchase the land. Russel Liston et al., A-27485 (October 21, 1957).

The record shows that the appellants' proof of ownership of contiguous lands was received at the Land Office on December 15, 1955, the 31st day after the date of the sale, and therefore not within the 30-day period provided for preference right claimants to assert their preference right. Evidence in support of a preference right claim filed 31 days after the date of the sale is filed too late to establish a valid preference right claim, even though such evidence was accepted by the Manager as satisfactory proof of ownership of adjoining lands. Cf. E. E. Larsen et al., A-27462 (September 17, 1957).

The regulation is specific in limiting to 30 days from the date of the sale within which to submit satisfactory proof of ownership of contiguous lands in support of a preference right. In Jess R. Manuel et al., A-27482 (November 29, 1957), the Department said that the provision of the regulation requiring a preference right claimant to file satisfactory proof of his ownership of adjoining lands during the 30-day period after the highest bid has been received is consistent with the statutory requirement that the preference right period should consist of not less than 30 days.

Mr. Alfred B. Corda et al., did not meet the requirements of the regulation since they did not, within the 30-day period, submit the required proof, and they have lost their preference right to purchase the land. Fred and Mildred M. Bohen, 63 I.D. 65 (1956). The decision of the Manager so far as it awards a portion of the lands to Alfred B. Corda et al., as preference right claimants is therefore reversed.

Accordingly, since the appellants did not meet the requirements of the regulation, all the land is awarded to Mr. Clyde G. Fritsch on the basis of his high bid at the time of the sale. Mr. Fritsch is therefore declared the purchaser of the land subject to his reimbursement of Alfred B. Corda et al., for ½ of the cost of publication [2] and his filing timely proof thereof. In accordance with 43 CFR 250.12, Mr. Fritsch must file in this office within 10 days of notice hereof, proof of such reimbursement.

---

[2] By check dated June 26, 1956, Mr. Fritsch paid to the representative of the appellants ½ of the cost of publication. Since this decision awards all of the lands in the sale to Mr. Fritsch, he must bear the entire cost of publication.

Alfred B. Corda et al., are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Alfred B. Corda et al., then the adverse party to be served is:

Clyde G. Fritsch
5015 3rd St.
San Francisco, California

Charles P. Mead

Acting Director

Enclosure

DISTRIBUTION:

Hon. Charles M. Teague, M.C.
Gilmore and Gilmore, Attorneys at Law (Certified Mail)
Mr. Alfred B. Corda et al. (Regular Mail)
Mr. Gordon D. Schaber, Attorney for Mr. Fritsch (Regular Mail)
Mr. Clyde G. Fritsch (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

In reply refer to:

Los Angeles 0155039
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 17, 1958

Certified Mail
Return Receipt Requested

DECISION

George Thomas Dickinson :
Alma J. Dickinson : Public Sale
:

Manager's Decision Affirmed

Mr. and Mrs..G. T. Dickinson have appealed from the decision of the Manager rejecting their application for the public sale of section 34, Township 8 South, Range 11 East, San Bernardino Meridian, California, on the ground that the State of California had previously perfected its right to obtain the same land.

In their appeal, Mr. and Mrs. Dickinson assert that they intend to use the land for a nonprofit, charitable medical project. They also state that they hold mining claims on the land, which claims they intend to develop to support their charitable project.

The record reveals that the State of California applied, under the provisions of section 8 of the Taylor Grazing Act (43 U.S.C., 1952 ed., 315g(c)) for Section 34 in exchange for certain lands owned by the State. (Los Angeles 0106794). The publication required by subsection (d) of section 8 was authorized by the Bureau on April 23, 1957; publication was made by the State in two local newspapers during the month of May, 1957; proof of publication was submitted in September; the State submitted a duly recorded deed of conveyance of the offered lands, and a certificate that the offered lands had not been sold or otherwise encumbered by the State. All of these papers were submitted by November 20, 1957. On that date, the State, having done all that was required of it to do, earned equitable title to Section 34. State of California, 60 I.D. 322, 328 (1949). It is therefore mandatory that the Department proceed to vest the State with the legal title to the land. State Applications to Exchange Lands Under Section 8 of of the Taylor Grazing Act, 61 I.D. 270, 273 (1954). Consequently, equitable title having vested in the State in November, 1957, the Department does not have the authority to dispose of the land pursuant to the public sale application filed on February 12, 1958. Cf. State of Wisconsin, et al., A-27542 (June 17, 1958).

In their statement of reasons, the appellants refer to mining claims on Section 34, but do not further identify these claims. An examination of the Riverside County Records reveals two claims, the Salton Sea Placer and the Desert Sunset Placer. Both claims were located by the appellants and their associates on February 13, 1958. Since the locations were made after equitable title to the land had vested in the State, at a time when the land was not subject to the operation of the mining laws of the United States, the claims are null and void.

The decision of the Manager is therefore affirmed, and, when this decision becomes final, appropriate action will be taken to transfer legal title to Section 34 to the State of California.

Mr. and Mrs. Dickinson are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken, then the adverse party to be served is:

State of California
State Lands Division
1403 12th Street
Sacramento 14, California

Charles P. Mead
Acting Director

Enclosure

Distribution:
Mr. and Mrs. G. T. Dickinson (Certified Mail)
State of California, State Lands Division (Regular Mail)
Hon. William F. Knowland, United States Senate
Hon. Patrick J. Hillings, Member of Congress
Lands Staff Officer
Appeals List No. 1
MG

In reply refer to:

Sacramento 051160
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 24, 1958

DECISION

Brian B. Hughes and
Emma M. T. Hughes
: Public Sale Application

Case Remanded

Brian B. Hughes and Emma M. T. Hughes have appealed from a decision of the Manager, rejecting their public sale application, stating that the land applied for is chiefly valuable for timber production and should be retained in Federal ownership for sustained-yield timber management.

Examination of the record shows that it is inconclusive on the issues posed. The record does show that the land contains approximately 2000 MBM, is a portion of the Central Sierra Management Unit of California Forestry District No. 4, and the belief has been expressed by a forester employed by the Bureau that the land can be managed by the Bureau for continuous yield of forest products.

It is our view that before a proper disposition of the land can be made in this case, further consideration must be given to the land pattern of other timber land in the area, both public and private with which the tract sought might be managed effectively; the location type, and control of access roads to the management unit, including proposed roads where appropriate; the feasibility of timber management on the public timber land within the unit,* encompassing all pertinent facts, and not merely a bare conclusion; and watershed, recreation, wildlife and other multiple use characteristics of the land including any special features, if any, that would be incompatible with private ownership.

---

* A **plat** should be prepared showing the pertinent features of the timber unit, such as distribution, approximate volume and value of timber, accessibility of timber in the unit, and other factors relating to the proper tenure of the unit as a whole.

Therefore, the case is remanded to the Manager through the Bureau's State Supervisor at Sacramento, California, for further consideration of the proper classification of the land.

For the Director:

John B Piccolo

Enclosure

DISTRIBUTION:

Mr. and Mrs. Brian B. Hughes (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

Affirmed A-27865 4-13-59

In reply refer to:
Los Angeles 0133576
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 4, 1958

Certified Mail
Return Receipt Requested

DECISION

Carl G. Allen Protestant-Appellant	:	
	:	Public Sale
Rhoda R. Adamson Appellee	:	

Decision of Manager Affirmed as Modified

Carl G. Allen has appealed from a decision of the Manager, dismissing his protest against the sale of certain lands which were offered at public sale pursuant to the application of Rhoda R. Adamson. The protest was dismissed upon a finding by the Manager that it was not filed within the period specified in the publication notice for the filing of adverse claims or objections.

In Willis N. Farlow et al, 62 I.D. 206 (1955) which involved a private exchange application, the Department ruled that where the notice of publication states the purpose of the notice is to give persons objecting to the exchange an opportunity to file their objections within 45 days after the first publication of the notice, a protest filed after the expiration of the 45-day period may be considered.* The principle expressed in that ruling applies in the instant case and the protest filed by Mr. Allen may therefore be considered on its merits.

The bases of the protest are: (1) Mr. Allen's application for some of the land in issue, Los Angeles 088528, was rejected November 4, 1954 on the basis that the land is needed for grazing administration; and (2) Mr. Allen alleges that although there are two springs on the land, the applicant stated there were none.

The record indicates that the conditions which formerly were considered as requiring the retention of the land (formerly embraced in Los Angeles 088528) no longer exist. The record clearly shows that the disposal of the lands at public sale is now consonant with the public interest.

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* The Department stated in that case: "This is not to say that the Department cannot refuse to consider a late protest. The point is that the time limitation in the notice does not compel the disregard of late protests."

Nor does the record show, apart from Mr. Allen's assertions, that there are springs on the land.

To the contrary, the report of field examination clearly states there are no springs, water holes, or running streams needed by the public and no mineral nor hot springs. Cf. 43 CFR 1954 ed., 292.1 et seq.

Accordingly, the dismissal of the protest is affirmed.

Carl G. Allen is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See attached Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Carl G. Allen, then the adverse party to be served is:

Mrs. Rhoda R. Adamson
6399 Wilshire Blvd.
Los Angeles 48, California

For the Director:
John B. Piccolo

Attachment

Distribution:
Mr. Carl G. Allen (Certified Mail)
Mr. Franklin A. Dill, Attorney for Appellee (Regular Mail)
Mrs. Rhoda R. Adamson (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
MAG

In reply refer to:

Los Angeles 091980
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 5, 1958

Certified Mail
Return Receipt Requested

DECISION

Laurin A. Comstock : Public Sale Application

Decision of Manager Affirmed

Mr. Laurin A. Comstock has appealed from a decision, rejecting his public sale application on the ground that the land is prospectively valuable for minerals. With certain exceptions not here applicable, mineral lands may not be sold under the public sale law. 43 CFR 250.8.

Mr. Comstock in his appeal alleges that although there is a small vein of copper running through the property, there is not enough to make a commercial mine, and a mining engineer "would not give it a second look as potential mining property."

A bare unsupported allegation that the land has no mineral value is not sufficient to overcome a finding by the Bureau that the land does have mineral value. Cf. Clarence John Cox, A-23434 (December 18, 1942). Nevertheless, in the light of Mr. Comstock's appeal, the land was carefully reexamined by a qualified Bureau employee, who found that there existed three unpatented mining claims on the land embraced in the public sale application. Two of the claims are owned by Frank J. Reinhart, Box 157, Little Rock, California, and the other is owned by Roy E. Mead, 4606 Pennsylvania Avenue, La Cresenta, California. The examiner found that there had been discoveries of copper veins in places with widths varying from six inches to three feet, and he concluded that the land was definitely mineral in character. We agree with that conclusion. There is no provision authorizing the reservation in public sale patents of minerals subject to the U. S. mining laws. See 30 U.S.C. sec. 21; Clarence John Cox, supra. The decision of the Manager is therefore affirmed.

Mr. Comstock is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken, then the adverse parties to be served are: Mr. Frank J. Reinhart and Mr. Roy E. Mead, whose addresses appear above.

For the Director:
John B. Piccolo

Enclosure

DISTRIBUTION:

Mr. Laurin A. Comstock (Certified Mail)
Mr. Frank J. Reinhart (Regular Mail)
Mr. Roy E. Mead (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MG

In reply refer to:

Los Angeles 0110572
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 7, 1958

DECISION

George H. Rodda, Jr. : Public Sale

Case Remanded

George H. Rodda, Jr., who was declared high bidder for certain land offered at a public sale held August 17, 1956,[1] has appealed from the Manager's decision of October 5, 1956, which voided the sale. The Manager stated his action was based on Mr. Rodda's failure to comply with the requirement set forth in a decision dated September 18, 1956, that he filed within 10 days therefrom evidence of reimbursement to the applicant for sale of the amount expended for the public sale notice, in accordance with the applicable regulation, 43 CFR 250.12(a).

The public sale applicant, by letter of August 22, 1956, requested withdrawal of his bid, and Mr. Rodda is the only remaining person interested in purchasing the offered land.

A review of the record discloses that the appellant made timely payment direct to the applicant for sale of the publication cost as required by the regulation 43 CFR 250.12(a). He has shown on appeal that his failure to file the signed receipt from the sale applicant as evidence of such payment within the 10-day period allowed by the Manager was caused by circumstances beyond his control. The signed, return receipt from the sale applicant, postmarked September 29, 1956, was not received by the appellant until October 2, whereupon he immediately submitted it for record in the Land Office on October 3, 1956.

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[1] Public sale of the land was held under provisions of section 2455, Revised Statutes, as amended, 43 U.S.C., 1952 ed., sec. 1171.

In the case of Sheridan P. and Lottie M. Winsor, A-26241, (October 30, 1951) the Department pointed out that the regulation calling for submission of proof of reimbursement is entirely for the benefit and protection of the unsuccessful applicant and that where there has been a diligent attempt at compliance with the regulation and strict compliance was prevented by a lack of cooperation on the part of the person to be protected by the regulation, the person making a good-faith attempt to comply will not be penalized. See also Guy Curless, Pacific Lumber Co., A-26910, (July 28, 1954).

In the circumstances, Mr. Rodda may be declared purchaser of the land and cash certificate will be issued to him in due course. Accordingly, the case is remanded to the Assistant to the State Supervisor of this Bureau at Los Angeles, California, for further appropriate action.

For the Director:
John B Piccolo

DISTRIBUTION:

Mr. George H. Rodda, Jr. (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
MAG
Asst. to SS (Los Angeles) w/Case Record Los Angeles 0110572

In reply refer to:
Sacramento 052975
050439
052523
5.04g

August 27, 1958

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

DECISION

John J. Hansen Mae D. Hansen	:	Public Sale Application

Decision of Manager Reversed

John J. Hansen* has appealed from a decision of the Manager, dated December 5, 1956, which partially rejected his public sale application for the stated reason it was in conflict to that extent with a prior Indian allotment application which assertedly had segregated the land.

The Manager's decision is predicated upon 43 CFR, 1954 ed., 176.10(c) which reads as follows:

> "Where an allotment application under the fourth section, accompanied by a certificate from the Indian Office showing that the applicant is an Indian and entitled to allotment, as required, is found to be in all respects complete and is accepted by the land officer, it operates as a segregation of the land, and subsequent applications for the same land will be rejected."

This regulation was adopted by the Department in pertinent portion on February 1, 1928, in 52 I.D. 383. Although, at first blush, it would appear that the Manager's action was in consonance with the governing regulations, the Indian allotment regulations were adopted prior to the enactment of the Taylor Grazing Act of June 28, 1934.

The public lands in California, together with lands in certain other states were temporarily withdrawn from settlement, location, sale or entry and reserved for classification, and pending determination of the most useful purpose to which such lands may be put as contemplated by the Taylor Grazing Act. This withdrawal is embodied in Executive Order No. 6910 of November 26, 1934.

It is clear, therefore, that at the time the Indian allotment application was filed the lands in issue were not subject to disposal thereunder until such time as the lands are classified as suitable for such purpose under sec. 7 of the Taylor Grazing Act. 43 CFR, 1954 ed., 296.2 contemplated that where classification is required under section 7 of the Taylor Grazing Act, an application to enter land will be considered merely as a petition for its classification. It, therefore, follows that the Indian allotment application did not attach to the land but was merely a petition for the classification of the land for such disposal. Cf. Alexander Bateman, A-27203 (November 9, 1955). Accordingly, the action of the Manager in treating the Indian allotment application as segregating the land was erroneous.

---

* The application was filed by John J. Hansen and Mae D. Hansen although the appeal was merely filed by John J. Hansen.

Accordingly, the Manager's decision is reversed and the case remanded to the Manager, Sacramento, through the Bureau's State Supervisor for further appropriate consideration.

For the Director:

A. H. Dunn

DISTRIBUTION:
SS (California) w/ case records Sacramento 052975, 050439, 052523
John J. Hansen and Mae D. Hansen (Regular Mail)
Lands Staff Officer
Appeals List No. 1
EVJ

In reply refer to:
Los Angeles 094097
0135739
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 28, 1958

Certified Mail
Return Receipt Requested

DECISION

Carl H. Impink :
William H. Wood : Public Sale

Manager's Decision Affirmed

Carl H. Impink and William H. Wood have appealed from a decision of the Manager, rejecting their public sale applications for the reason that the lands are valuable for minerals locatable under the U. S. mining laws.

After receipt of a protest filed by George Matilla 1/ against the public sale of the lands on the basis that the lands are mineral in character, a mineral examination was conducted which disclosed that the lands contained orthoclase, cuprite, malachite, calcite, quartz, pyrite and limonite, and possibly gold and copper. The lands contain two patented mining claims, 2/ three unpatented lode claims and a mill site.

The appellants have asserted as their reason for appealing that they doubt that the lands are mineral in character, but they have submitted no evidence to buttress their assertion.

A mere statement by the applicants that the facts are not as reported in the Bureau's field examination is not sufficient to rebut the findings embodied in a report of field examination. Cf. Mary Refugio Jackson, et al., A-27236 (February 29, 1956).

1/ The record indicates that George Matilla owns two unpatented lode mining claims on the lands in issue.

2/ Patented lands are, of course, not subject to the jurisdiction of the Department, Cf. Everett Elvin Tibbetts, 61 I.D. 397 (1954) and the applications would necessarily have to be rejected as to the patented lands. Rose Tully, Protestant, Barney A. and Dolly B. Cornelius, Patentees, A-26719 (September 9, 1953)

Lands which are valuable for minerals locatable under the U. S. mining laws are not subject to disposal under the public sale law. See 30 U.S.C. sec. 21; Buck Willcoxson, A-27402 (December 17, 1956).

Accordingly, the decision of the Manager is affirmed.

Messrs. Impink and Wood are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by either appellant, then the adverse party to be served is: Mr. George Mattila, Post Office Box 34, Jamul, California.

For the Director:

GH Dunn

Enclosure

Distribution:

Mr. Carl H. Impink (Certified Mail)
Mr. William H. Wood (Certified Mail)
Mr. George Mattila (Regular Mail)
Mr. and Mrs. Everett R. Dauerty (Regular Mail)
Mr. J. W. Yonker, (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
JHO'D

40658

In reply refer to:

Sacramento 050512
048531
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 8, 1958

Certified Mail
Return Receipt Requested

DECISION

R, G. Hotchkiss	: : :	Public Sale Application

Acting Manager's Decision Affirmed
Hearing Denied

R. G. Hotchkiss has appealed from a decision of the Manager rejecting his public sale application for the stated reason that the land was classified as suitable for disposal under a prior State indemnity selection application, Sacramento 048531.

The field investigation disclosed that although the land is located within the North Coast Unit sustained yield timber management area, it is completely isolated and located some distance from other public domain. The record shows that disposal of the tract would not create an access problem in the management of other Federal lands, and that it would be in the best interest of the public to dispose of the land to the State of California under its prior application.

The question in issue is one of proper classification and the appellant has submitted no positive evidence that the classification is in error.

The appellant's statement of reasons for his appeal has been carefully considered. It provides no basis for changing the classification of the land as suitable for disposal to the State under the school indemnity law. State selections are to be preferred over conflicting private applications for the same land. State of Arizona et al., Arizona 013986 etc., (May 2, 1958). The public sale application was properly rejected. Cf. Nelson A. Gerttula, 64 I.D. 255 (1957).

Although the appellant has requested a hearing, it does not appear that a hearing would develop facts decisive of the issues involved. Accordingly, the request for a hearing is denied. Cf. Margaret A. Andrews, 64 I.D. 9 (1957).

The decision of the Acting Manager is affirmed.

Mr. R. G. Hotchkiss is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Hotchkiss, then the adverse party to be served is:

State Lands Division
State of California
Sacramento 14, California

For the Director:

Enclosure

DISTRIBUTION:

Mr. Timothy W. O'Brien (Regular Mail)
Mr. Edward J. Anzore (Certified Mail)
Mr. R. G. Hotchkiss (Regular Mail)
Division of State Lands, State of California (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

appeal to Sec.
Affirmed A-27891 - 4-23-59

In reply refer to:
Los Angeles 0139834
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 16, 1958

Certified Mail
Return Receipt Requested

DECISION

Mendell Phillip Schneider : Public Sale

Manager's Decision Affirmed

Mendell Phillip Schneider has appealed from the decision of the Manager, dated May 27, 1957, apportioning land sold at a public sale between himself and George Rodda, Jr., the two preference right claimants. The decision awarded the appellant 40 acres, and Mr. Rodda the remaining 10 acres.

The appellant asserts that Mr. Rodda should not be awarded any of the land because the latter's preference right claim is based only upon a 33 foot parcel of land which constitutes a part of an easement area reserved for rights of way in connection with a previously patented small tract and which he purportedly purchased in order to qualify as a preference right claimant, and because the appellant has a greater use for the land, since he will "build on" it. The appellant also states that it is inequitable to require him to purchase so much rough and mountainous land in order that he might purchase the homesite land, when Mr. Rodda for less money will receive more homesite land and is required to purchase only one acre of rough and mountainous land. 1/

The appellant quite properly does not claim that Mr. Rodda is not a valid preference right claimant, since neither the nature of the adjoining land so long as it is privately owned, nor the intent of the preference right claimant in obtaining the adjoining land, are factors in determining the validity of the preference right claim.

An award of lands offered at public sale between two preference right claimants will not be disturbed where the appellant fails to present convincing evidence that the award was unfair or based upon material error, and the award appears to have been properly made upon the basis

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1/ The appellant later filed supplementary reasons for appealing, but since he failed to serve the adverse party with a copy of these, the document cannot be considered in this appeal. 43 CFR, 1957 Supp., 221.4.

of topography of the lands and desirable land pattern. Ormand L. and Myrtle A. Hurt, A-27544 (February 14, 1958). In the instant case, the rough and mountainous land will be valueless unless it is attached to homesite land and the remaining land's best use is for future homesites. There is no evidence that the appellant, a builder, has different plans for the land than those of Mr. Rodda, a real estate man.

Absent other factors, equity requires in this case that the homesite land be divided as equally as possible between the two preference right claimants. The land pattern and topography made it unreasonable to divide the land other than as the Manager awarded it, and the appellant and Mr. Rodda were each properly awarded the parcel nearest the land they already owned.

Accordingly, the decision of the Manager is affirmed.

Mr. Schneider is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Schneider, then the adverse party to be served is: George Rodda, Jr., 1406 N. Sierra Bonita Ave., Pasadena 7, California.

For the Director:

A H

Enclosure

DISTRIBUTION:

Mr. Mendell Schneider (Certified Mail)
Mr. George Rodda, Jr. (Regular Mail)
Appeals List No. 1
Lands Staff Officer
JHO'D

In reply refer to:
Los Angeles 0142940
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 25, 1958

Certified Mail
Return Receipt Requested

DECISION

John D. and Pauline H. Moore	:	Public Sale

Manager's Decision Affirmed

The above-named parties have appealed from the decision of the Manager, which rejected their public sale application for the reason the land involved is neither isolated, nor mountainous, nor too rough for cultivation within the meaning of the public sale law.

The land is located in the Mojave Desert in San Bernardino County, California. The topography is rolling, and the soil is composed of a Hesperia loamy sand. The reports of field examination discloses that practically all of the land in each legal subdivision is susceptible of cultivation insofar as topography and soils are concerned. 1/ Cf. Charles G. Elwood, Oregon 05257 (July 9, 1958).

The appellant contends that the land was considered to be mountainous and too rough for cultivation in connection with the rejection of desert land entries for some of the same land or land in the same area.

It appears that the major factor in rejecting the desert land entries was the lack of adequate water for irrigation, and except for a few instances, not because the lands were mountainous or too rough for cultivation.

The reports of field examination indicate that the lands are suitable for, and are being considered for development under the Small Tract Act of June 1, 1938. (52 Stat. 609), as amended.

Since the land is not mountainous or too rough for cultivation and it is not isolated within the purview of the public sale law, the land cannot be sold under that law. Albert N. Froom, A-27124 (May 23, 1955).

The decision of the Manager is affirmed.

1/ Information was taken from reports of field examinations made in December 1954, and in August, 1957 subsequent report made in January, 1958, in connection with the subject case and desert land entries referred to.

John D. and Pauline H. Moore are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

John D. and Pauline H. Moore (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

42059

In reply refer to:

Sacramento 055144
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 2, 1958

Certified Mail
Return Receipt Requested

DECISION

Francis Y. Doran : Public Sale
:
:

Manager's Decision Affirmed

The above-named party has appealed from the decision of the Manager which rejected his public sale application for the reasons that the land is not isolated within the meaning of the law,* and the appellant does not own adjoining land and consequently is not a qualified applicant under the second proviso of the public sale law.

The records show, and the appellant does not deny, that the land applied for is not isolated, but is part of a larger body of public land that is isolated from other public land.

The public sale law authorizes disposal of land thereunder only when the land (1) not exceeding 1520 acres, is isolated or (2) is mountainous or too rough for cultivation upon the application of an adjoining landowner or one who holds a valid entry to adjoining land.

The appellant's application is not for isolated land, and he has stated that he does not own adjoining land or hold a valid entry on such land. His application, therefore, were properly rejected. Edwin Nivenski, A-27180 (November 14, 1955).

The Manager's decision is affirmed, without a prejudice to the right of the appellant to file a public sale application for the isolated tract encompassing the land in issue and the additional 80 acres, comprising the isolated tract. The authorized officer of the Bureau may dispose of all of the land in the isolated tract, upon proper application, or upon his own motion, if he determines that the land should be disposed of under the public sale law. The appellant would then have the opportunity of bidding for the isolated tract and fee owners of adjoining lands would have 30 days from the date of sale within which to establish their preference rights.

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* Section 2455, Revised Statutes, as amended (43 U.S.C. 1171).

43552

Mr. Francis Y. Doran is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. Francis Y. Doran (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

In reply refer to:

Sacramento 055294
055295
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 6, 1958

Certified Mail
Return Receipt Requested

DECISION

Paul E. Moyer : Public Sales
:
:

Manager's Decision Affirmed

The above-named party has appealed from the decisions of the Manager which rejected his public sale applications for the reason that the land is not isolated within the meaning of the law, and the appellant does not own adjoining land and consequently is not a qualified applicant under the second proviso of the public sale law. 1/

The records show that the land applied for is not isolated for the reason it adjoins other public land, which is embraced in an enlarged homestead application filed by the appellant which has been rejected and is at present on appeal to the Secretary of the Interior. The appellant is not the owner of any other adjoining land.

The public sale law authorizes disposal of land thereunder only when the land (1) not exceeding 1520 acres, is isolated, or (2) is mountainous or too rough for cultivation upon the application of an adjoining land owner, or one who has a valid entry to adjoining land. (Emphasis supplied).

In the instant case the appellant's rejected enlarged homestead application does not constitute a valid entry, nor an appropriation of the land as would isolate the land embraced in the subject public sale applications, within the meaning of the public sale law, *supra.*

1/ Section 2455, Revised Statutes, as amended, (43 U.S. C. 1171).

The appellant asserts with respect to public sale application, Sacramento 055295, that the west side of the tract is bounded by a county road, 60 feet in width and urges that the road isolates [2] the land applied for on west boundary. It appears to be the appellant's position that a road, constructed under R. S. 2477 (43 U.S.C., 932) is effective to isolate the land it borders. However, rights-of-way are not excluded from computation of acreage in public land disposals. *Robert E. Miller et al*., A-26374 (October 14, 1952). The aforementioned law grants merely an easement, *Oregon Short Line R. Co*. v. *Murray City*, 2 Utah 2(d) 427, 277 P. (2d) 798 (1954) [3] and a person acquiring a patent to the land embracing the right-of-way takes the patent subject to the easement. *Sullivan* v. *Condas* 76 Utah 585, 290 P. 954 (1930).

In *Lawrence D. Keeler*, A-26212 (December 19, 1951), the Department held that "* * * an easement does not segregate the land in which it is enjoyed, and therefore, does not cut the land into incontiguous tracts." It necessarily follows that the road does not isolate the land on the west.

Therefore, since the appellant's applications are not for isolated land, and he is not the owner of adjoining land or holder of a valid entry on such land, his applications were properly rejected. *Edwin Nivenski*, A-27180 (November 14, 1955)

The Manager's decisions are affirmed.

Mr. Paul E. Moyer is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR 221, as amended, See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. Paul E. Moyer (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

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[2] The land is isolated on the north, east, and south.

[3] See also *Solicitor's Opinion*, M-36274 (April 15, 1955), captioned "Limitation of access to through-highways crossing public lands."

In reply refer to:
Sacramento 041249
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 5, 1958

Certified Mail
Return Receipt Requested

DECISION

:
H. F. Dangberg Land & Livestock Co.: Public Sale
:

Decision of Manager Affirmed as Modified

The above-named appellant has appealed from a decision of the Manager partially rejecting its public sale application for lands which are mountainous or too rough for cultivation for the stated reason that (1) lot 6, sec. 14, T. 9 N., R. 21 E., M.D.M., California, was withdrawn for Public Water Reserve No. 41, California No. 6, by the Executive order of January 3, 1917; and (2) the SE¼NW¼, NE¼SW¼ sec. 31, T. 9 N., R. 22 E., M.D.M., California is not adjoined by land owned by the applicant.

The Manager properly rejected the application to sell withdrawn land. Earl L. Livermore, A-27522 (February 7, 1958). With its appeal, the appellant petitioned for restoration to entry of the rejected land situated in the public water reserve. Public Land Order 1595 dated February 28, 1958 restored lot 6 to entry. The land may be sold, if otherwise proper for such disposal, upon a new proper application therefor.

The appellant asserts with respect to the public land in section 31, that the appellant holds a long term lease to adjoining land. An applicant for sale of a tract which is mountainous or too rough for cultivation must show that he is the owner of the whole title, that is, the fee owner, of land adjoining the land applied for, or that he holds a valid entry embracing adjoining land. See 43 U.S.C. 1171 and 43 CFR 250.7(b). The requirement of proof of ownership of adjoining land is prerequisite to the public sale of non-isolated land which is mountainous or too rough for cultivation. E. E. Larsen, Victor Cleveland, A-27462 (September 17, 1957). The word "entry" as used in the public land laws, covers all methods by which a right to acquire title to public lands may be initiated. United States v. Northern Pac. Ry. Co., et al., 204 F. 485, 487 (1911). The appellant's lease of adjoining land fails to meet the statutory and regulatory requirements.

Accordingly, the Manager's decision is affirmed, as modified.

H. F. Dangberg Land & Livestock Company is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

G. H. Dunn

Enclosure

DISTRIBUTION:
H. F. Dangberg Land & Livestock Company (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
JHO'D

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* When this decision becomes final, the case record will be returned to the Manager through the Bureau's State Supervisor at Sacramento, California, for further processing of the appellant's application with respect to the remaining lands sought.

45092

Appeal to Sec

Dismissed A-27941 3/31/59

Supp. 6-15-59

List 4-6-59

In reply refer to:
Sacramento 052556
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 18, 1958

Certified Mail
Return Receipt Requested

DECISION

Marie E. Hammond et al.	:	Public Sale

Manager's Decision Modified

Marie E. Hammond and Marie M. Nichelini have appealed from the decision of the Manager awarding all of the land sold at a public sale to preference right claimants Henry W. and Beatrice H. Luhmann to the exclusion of the appellants, for the stated reason that "the equities, as defined in 43 CFR 250.11(b)(3) favor the applicants.* * *"

The record shows that the SW¼NE¼, W½SE¼ sec. 2, T. 7 N., R. 4 W., M.D.M., California, was sold at public auction on July 2, 1957, upon the application of Mr. and Mrs. Luhmann. The applicants were declared the high bidders at the auction, and, thereafter, all parties timely established valid preference right claims. The conflicting preference right claimants were unable to agree as to a division of the land among themselves during the 30-day period allowed pursuant to 43 CFR, 1956 Supp., 250.11(b)(3).

A field examination reveals that, although parts of the land have some scanty value for grazing purposes, the land has its primary use as a site for private hunting. The land is included in Mrs. Nichelini's grazing lease, but has not been used by her appreciably. There are two moist spots on the land, which, although small, might be developed into permanent water sources. The Luhmanns have constructed a jeep trail which is the only practicable access to the land. The evidence shows that none of the three claimants use their adjoining land for any extensive livestock operations.

The appellants assert that equitable considerations dictate that the SW¼SE¼ should be awarded to Mrs. Hammond, and the rest of the land should be awarded to Mrs. Nichelini, and each appellant disclaims any interest in that part of the land sought by the other. Mrs. Hammond states that she needs the SW¼SE¼ as protection from hunters approaching her dwelling and because she has been using the small spring contained on the land. Mrs. Nichelini asserts a need for an undisturbed flow of water from the springs on the land, and states that the appellants have made a private agreement to assure her this protection. The Luhmanns assert that there is an adequate water supply on the Nichelini land.

The cited regulation does in part provide that if "equitable considerations dictate, all of the subdivisions may be awarded to one of the claimants." We do not find such equitable considerations present in the instant case. The comparative use of the land for grazing in connection with each party's adjoining land is not controlling, since none of the claimants appear to have substantial livestock operations in the area which would be affected by the acquisition of the land. The land's primary value is as a site for private hunting, and there is no evidence that any one party can better use the land for this purpose than another. Although the jeep trail is the only current practicable access to the land, this does not mean that the other parties cannot also develop trails to the land.

43 CFR, 1957 Supp., 250.11(b)(3) provides in part that, in the absence of equitable considerations dictating that all of the land be awarded to one claimant, an equitable division of the land will be made taking into consideration such factors as (i) equalizing of the number of acres which each claimant will be permitted to purchase, (ii) desirable land use, based on topography, land pattern, location of water, and similar factors, and (iii) historical use including maintenance of improvements.

Since the land consists of three subdivisions, the number of acres allowed each claimant is best equalized by awarding one subdivision to each claimant. Mrs. Hammond's land adjoins only the SW¼SE¼, and she has expressed and shown only a use for this land. Mrs. Nichelini has expressed a need for the rest of the land, and the Luhmanns have expressed a desire for all of the land. The Luhmanns and Mrs. Nichelini own land adjoining each subdivision. Mrs. Nichelini owns land adjoining the SW¼NE¼ on two sides. One fork of the Luhmanns' jeep trail which is their access to the land leads toward the NW¼SE¼. Each of the subdivisions can be used for hunting and, as previously indicated, none of the parties needs the land for grazing purposes.

Accordingly, the decision of the Manager is modified to award to Mrs. Hammond the SW¼SE¼, to Mrs. Nichelini the SW¼NE¼, and the Luhmanns the NW¼SE¼.

The applicants paid $29.25 for publication of notice, and pursuant to 43 CFR 250.12, each appellant must reimburse the applicants the sum of $9.75. If either appellant fails to furnish this office with evidence that she has reimbursed the applicants within 10 days after service of this decision, the award to such party will be set aside.

Mr. and Mrs. Luhmann and Mrs. Nichelini are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by any party, then the other parties must be served. Mrs. Hammond and Mrs. Nichelini can be served through their attorneys, Gilmore & Gilmore, 301 Crocker-Anglo Bank Building, 1007 Seventh Street, Sacramento 14, California. Mr. and Mrs. Luhmann's address is 2275 Big Ranch Road, Napa, California.

A. H. Drew

For the Director

Enclosure

DISTRIBUTION:

Hon. John J. Allen, Jr., House of Representatives (Regular Mail)
Hon. Hubert B. Scudder, House of Representatives (Regular Mail)
Henry W. and Beatrice H. Luhmann (Certified Mail)
Gilmore & Gilmore, Attorneys at Law (Certified Mail)
Mrs. Marie M. Nichelini (Regular Mail)
Mrs. Marie E. Hammond (Regular Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

In reply refer to:

Sacramento 044591
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 24, 1958

Certified Mail
Return Receipt Requested

DECISION

Homer W. Mannix : Public Sale
William C. Mannix :
:

Decision of Manager Affirmed

Homer W. Mannix and William C. Mannix have appealed from a decision of the Manager, which awarded a single subdivision offered at public sale 1/ pursuant to their application, to Ernest and Emily Lambert.

The applicable regulation, 43 CFR, 1957 Supp., 250.11(b)(3), reads in pertinent part as follows:

> "* * *Where only one subdivision (of public land) is offered for sale and it adjoins the lands of two or more preference right claimants, it will, in the absence of equitable considerations requiring otherwise, be awarded to the applicant for the sale if he is a qualified preference right claimant; * * *" (underscoring supplied).

Evidence of record shows both the Mannixes and Lamberts 2/ to be qualified preference right claimants. Both timely submitted required title data showing ownership of land adjoining the isolated tract, the Mannixes showing they are the owners of adjoining land on the east and the Lamberts showing ownership of land adjoining the subdivision in issue on the north, west, and south.

1/ The sale was held April 24, 1957, pursuant to section 2455 of the Revised Statutes, as amended (43 U.S.C., 1952 ed., sec. 1171, and the regulations 43 CFR, Part 250. The tract as offered for sale included the land and timber.

2/ The record shows Mr. Ernest Lambert died on November 9, 1957, after assertion of the preference right claim.

The determination by the Manager was based on specific findings of equitable considerations in favor of the Lamberts as well as on evidence of grazing on a portion of the land in issue and indications that the land pattern would be further complicated by disposal of the tract to the appellants.

The Mannix appeal makes contentions of:

(1) Exaggerated importance of grazing factors in the land. Specifically the Mannixes assert that the land has a meager value for range use and that it could be utilized for that purpose by the Mannixes or the Lamberts. The appellants indicated when initially making application for sale of the tract that they desired it for grazing purposes and deer hunting. Mr. William C. Mannix states that in 1950 he purchased the timber rights to the tract but discovered title was defective. (The tract has always been public land and the timber owned by the United States.)

(2) The land pattern involved would not require award of the offered tract to the Lamberts since they would nevertheless have access to their adjoining properties on the north and west of the offered tract by reason of (a) a trail following truck roads down the east bank of the Rancheria River, (b) the horse trail to the south of the offered tract and leading to the Lamberts' presently owned land west of the offered tract, as well as (3) access by a trail through the Mannix property. The Mannixes assert this latter trail is used freely by the Lamberts and their lessees, and this privilege would not be curtailed in the future.

(3) Off-tract property improvements consisting of ditches to prevent flooding, and two access roads, one extending from the Mannix ranch toward the offered tract and the other on the west of the tract leading to the western boundary of the tract.

(4) The Mannixes claim their interest in the property would include utilization and management of the timber resources of the offered tract. They assert there is a spring on the land which would be utilized to pipe water to their adjoining, privately owned land where they state it is essential because of the poorer quality of water from the spring located on the Mannix property and the greater pumping distance to bring it to the Mannix house. This is not corroborated either in the field reports or by any more detailed showing. An affidavit by Ernest Lambert submitted with his showing of adjoining land ownership, states water on the offered tract is not needed by the Mannixes since there is available water on the Mannix land and closer to them.

No answer to the appeal was submitted by the Lamberts. However, the record assembled in connection with a color of title application by the Lamberts (Sacramento 045658) 3/ contains considerable data relating to past use of the tract by the Lamberts, personally or through tenants, and long-continued payment of taxes on the land in the belief it was part of their ranch. 4/ This past usage establishes the Lamberts as historical users of the offered tract. Recognized historical use of land offered for public sale as well as desirable land use based on land pattern, are factors to be considered in the award of land between conflicting preference right claimants. The offered tract in the way it is situated appears to be an integral part of the Lambert ranch. The physical situation of the tract with respect to the Lamberts' property dictates its award to the Lamberts. Otherwise the Lamberts would be left without a passage or connection between the main Lambert properties and their private land used as sheep range which lies west and north of the offered tract. Ownership of the offered tract by the Lamberts will eliminate a pocket in their present land holdings and promote the more desirable land pattern. On the other hand, were the tract awarded to the appellants, it would extend or jut into the private land of the Lamberts. It is therefore proper to determine that these are equitable factors which warrant the award of the offered tract to the Lamberts. Guy B. and Wilda J. Seibert, A-27524 (December 12, 1957).

The decision of the Manager is affirmed.

Homer W. Mannix and William C. Mannix are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See attached Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Homer W. Mannix and William C. Mannix, then the adverse party to be served is:

Mrs. Emily Lambert
413 West Smith Street
Ukiah, California

A. H.

For the Director

Attachment

Distribution on page 4.

3/ Departmental decision of August 13, 1956, 63 I.D. 249, denied the color of title claim on the basis that a showing was not made that valuable improvements had been placed on the land as required by law.

4/ In connection with their application Sacramento 045658 the Lamberts claimed color of title in the offered tract was acquired with its purchase in 1929 by William Lambert. They submitted data showing a chain of title in themselves and their grantors from 1905, and showing payment of taxes from 1930 until the date of application (February 18, 1952), except in 1932, 1933, and 1934.

DISTRIBUTION:

Hon. Wayne Morse, U.S.S.
Mr. Homer W. Mannix (Certified Mail)
Mr. William C. Mannix (Certified Mail)
Mr. Timothy W. O'Brien, Attorney for Appellee
Mrs. Emily Lambert (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
MAG

45092

In reply refer to:
Los Angeles 0144972
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 23, 1958

Certified Mail
Return Receipt Requested

DECISION

James E. and Elsie M. Kelley : Public Sale

Acting Manager's Decision Affirmed

The above-named appellants have appealed from the Acting Manager's decision, dated July 8, 1958, rejecting their public sale application for the stated reason that the land in issue is not isolated, and the greater part of each subdivision is not mountainous nor too rough for cultivation within the meaning of the public sale law (43 U.S.C. 1171).

The record shows that the land is not isolated. A field examination shows that the topography of the land is gently sloping, although cut by several washes which are not of great depth. Adverse water conditions and sub-marginal soil indicate that the land is unfit for agricultural development. The land has been recommended for small tract development.

The appellants assert that the terrain is too rough for cultivation, at least for portions of the land covered by the application, and that there is insufficient water for agricultural development.

Land which is not isolated and of which the greater part of each subdivision is not mountainous or too rough for cultivation cannot be sold under the public sale law. Albert N. Froom, A-27124 (May 23, 1955). The fact that the land may not be suitable for cultivation because of reasons other than rough terrain is not a sufficient predicate for disposal of the land under the public sale law. Cf. Wendell Raymond McKinney, Arizona 011026 (April 21, 1958). The Acting Manager after a field examination by Bureau personnel, has made a finding that the land is not too rough for cultivation. The bare assertion, not buttressed by competent evidence, that the Acting Manager's determination is not correct is not sufficient to warrant reversing his finding. Moreover, the assertion that portions of the land are too rough for cultivation does not necessarily negate the finding that the greater part of each subdivision is not mountainous or too rough for cultivation.

Accordingly, the decision of the Acting Manager is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal, there must be strict compliance with the regulations.

If an appeal is taken by the appellants, then the adverse parties to be served are:

Mr. James M. Roberts
1036 McFarland Avenue
Wilmington, California

Mr. Robert Ellis Smith
11702 Adenmoor
Downey, California

For the Director:
John B.

Enclosure

DISTRIBUTION:

Mr. T. L. DeBord, Attorney at Law (Certified Mail)
James E. and Elsie M. Kelley (Regular Mail)
James M. Roberts (Regular Mail)
Robert Ellis Smith (Regular Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

46567

PUBLIC SALE * 2 Applications

* 8 Rough or Mountainous

Land which is not isolated and of which the greater part of each subdivision is not mountainous or too rough for cultivation, cannot be disposed of under the public sale law.

James E. and Elsie M. Kelley, Los Angeles 0144972 (December 23, 1958)

appeal to Sec
Remanded A-28002
10-19-59

In reply refer to:

Sacramento 049872
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 23, 1958

Certified Mail
Return Receipt Requested

DECISION

Flora F. Gray, Appellant : Public Sale (Award of Lands)
Harry A. Lundblad, Appellee :

Decision of the Manager Affirmed

Flora F. Gray has appealed from a decision of the Manager involving the public sale of lands described as the S½NW¼ sec. 26, T. 9 N., R. 11 W., M.D.M., California, wherein the Manager awarded the SW¼NW¼ to Mrs. Gray and the SE¼NW¼ to Harry A. Lundblad (public sale applicant).

By decision of May 13, 1957, Appellant, and Harry A. Lundblad were allowed 30 days from receipt thereof to agree upon a division of the lands acceptable to both parties and to file evidence of the agreement with the Manager. However, no agreement was filed.

Certificates of ownership of Sonoma County Land Title Company and Sonoma Abstract Bureau indicate that the adjoining lands to the south are owned by Harry A. Lundblad, the applicant for sale, and that the adjoining lands to the east and to the north are owned by the appellant and her deceased husband, Edward A. Gray.

Mrs. Gray alleges on appeal that the SE¼NW¼ section 26, affords a natural pass for livestock using her deeded lands and that without the land the West end of her patented lands are practically worthless. However, the field report indicates that Devil Creek acts as a natural topographic barrier to the movement of livestock. Moreover, Mrs. Gray's statement fails to reveal in what way the SE¼NW¼ serves as a natural pass for livestock as she alleges.

On the other hand the SE¼NW¼ immediately adjoins the deeded lands of the applicant, Harry A. Lundblad, and is readily accessible to use in conjunction with his lands.

The pertinent regulation provides that in the absence of an agreement between the parties involved an equitable division of the lands will be made taking into consideration such factors as (1) the equalizing of the number of acres which each claimant will be permitted to purchase, (2) desirable land use based on topography, land pattern, location of water and similar factors and (3) historical use. 43 CFR 250.11(b)(3).

After careful consideration of the issues in this case we can find no reason for departing from the general rule of equalizing the number of acres each claimant will be permitted to purchase.

Mrs. Gray has not shown that the Manager erred. The award appears to have been equitable and proper, and no evidence has been presented which justifies any change in the Manager's decision. Cf. M. L. Oldroyd et al., A-27315 (July 5, 1956). Therefore, the decision of the Manager is affirmed.

Flora F. Gray is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Flora F. Gray, then the adverse party to be served is:

Mr. Harry A. Lundblad
1155 - 7th Street
Nerato, California

For the Director:
John B. Ricolo

Enclosure

DISTRIBUTION:

Gilmore and Gilmore, Agent for Flora F. Gray (Certified Mail)
Mrs. Flora F. Gray (Regular Mail)
Mr. John E. McDonald (Regular Mail)
Mr. Harry A. Lundblad (Regular Mail)
Lands Staff Officer
Appeals List No. 1
CFG

46567

PUBLIC SALE * 1 Generally

PUBLIC LANDS * 1 Generally

Land valuable for gold is not subject to disposal at public sale.

Lands valuable for a locatable mineral under the United States mining laws is not subject to disposal under the public sale law.

Richard B. Millin, Sacramento 051957 January 22, 1959

In reply refer to:

Sacramento 051957
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 22, 1959

Certified Mail
Return Receipt Requested

DECISION

Richard B. Millin	:	Public Sale

Manager's Decision Affirmed as Modified

Richard B. Millin has appealed from a decision of the Manager of the Land Office, dated September 4, 1958, which rejected his public sale application for the reason that the land applied for had been classified as mineral in character.

The record indicates that on November 4, 1957, the applicant amended the application to include Mineral Lot 222 in secs. 9 and 10, and Mineral Lot 221 and Lots 2, 3, and 4, sec. 10, T. 16 N., R. 8 E., M.D.M., California. It appears that through inadvertency lot 4, sec. 10, was omitted from the decision of the Manager of September 4, 1958. Therefore, that decision is modified to include lot 4, sec. 10.

The report of field examination discloses that there are on the land in issue at least three mineralized zones in the form of quartz veins and silicified, ironstained shear zones. These zones are northern extensions of the nearby Nevada City and Grass Valley vein systems that have produced millions in gold from similar, although larger, structures in the same granodiorite and schist country rock. The examiner found that there have been discoveries of gold in the land and that the tract is covered in part by three quartz mining claims which are being prospected in varying degrees. The examiner concluded that the land is mineral in character, valuable for gold. The land was classified as mineral land on August 25, 1958.

The appellant contends that the land is not mineral in character, but has submitted no evidence to buttress his contention. A mere statement by the appellant that the facts are not as reported in the field examination is not sufficient to rebut the findings embodied in a report of field examination. Cf. Mary Refugio Jackson et al., A-27236 (February 29, 1956).

Lands which are valuable for gold are not subject to disposal at public sale. Ruth Cynthia Kress, A-25349 (August 6, 1948). The Department regulation provides that mineral lands may be sold only if there is a specific statutory authority for the sale of land valuable for that mineral with a reservation of the mineral to the United States (43 CFR, 1954 ed., 250.8(a). Lands valuable for gold are not within the class of lands saleable with an appropriate reservation. Furthermore, the Department has stated that lands which are valuable for minerals locatable under the United States mining laws are not subject to disposal under the public sale law. Buck Willcoxon, A-27402 (December 17, 1956).

Accordingly, the decision of the Manager is affirmed as modified. Carl H. Impink et al., Los Angeles 094097 (August 28, 1958).

Mr. Richard B. Millin is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. Richard B. Millin (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

DEPT OF INTERIOR
SACRAMENTO CAL.
FEB 3 4 19 PM 1959
BUREAU OF LAND MANAGEMENT
LAND OFFICE

LL(Sac)

PUBLIC SALE * 3 Classification

Where a public sale application is rejected on the grounds that the land sought is susceptible of timber management by this Bureau, the case may be remanded for further consideration if the record is inconclusive as to the proper classification of the land. Thomas N. Healy, Sacramento 051571 (February 2, 1959)

In reply refer to:

Sacramento 051571
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 2, 1959

DECISION

Thomas N. Healy	:	Public Sale Application

Case Remanded

Thomas N. Healy has appealed to the Director from a decision of the Manager, dated September 10, 1957, rejecting his public sale application for an isolated tract of 690 acres in Mendocino County, California, because the land is chiefly valuable for timber production under sustained-yield management.

The field report of June 26, 1956, states that the lands contain a valuable stand of timber; that they are within a management unit of California Forestry District No. 4 (now No. 5); and that their disposal would adversely affect operations of the district. A supplemental field examination made on April 7, 1958, disclosed that the timber is concentrated on about 40 acres along High Valley Creek, and that the remaining 650 acres are barren, shale, and brushland. It is not clear from the record how this land fits into the larger management unit. The field report fails to provide essential basic data and analysis bearing upon the fundamental land classification question involved - that the disposal of the tract would adversely affect operations of California Forestry District No. 5.

It is our view that before a proper classification of the land can be made in this case that further consideration must be given to the land pattern of other timber land in the area, both public and private with which the tract sought might be effectively managed; the location, type, and control of access roads where appropriate; the feasibility of timber management on the public timber land within the unit; and recreation, wildlife, and other multiple use characteristics of the land including any special features, if any, that would be incompatible with private ownership.

Therefore, the case is remanded to the Manager through the Bureau's State Supervisor at Sacramento, California, for further consideration of the proper classification of the land. 1/

For the Director:

Enclosure

DISTRIBUTION:

Mr. Thomas N. Healy (Regular Mail)
State Supervisor w/Sacramento 051571, 055129, and 055156
Lands Staff Officer
Appeals List No. 1
ALR

1/ The record indicates that the lands in T. 12 N., R. 9 W., M.D.M., may be valuable for manganese. Lands valuable for minerals locatable under the United States mining laws are not subject to disposal under the public sale law. Buck Willcoxon, A-27402 (December 17, 1956).

L(Sac)

INDIAN ALLOTMENTS * 1 Generally

PUBLIC SALE * 3 Classification (Timber) ✓

An Indian allotment application cannot have any segregative effect until the land has been classified for that type of disposition.

Where the records merely state that the land is valuable for Federal timber management the case will be remanded for the inclusion of specific data upon which an informed determination can be based.

McIntosh Lumber Company, Sacramento 051942 (February 12, 1959)

LO

In reply refer to:
Sacramento 051942
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 12, 1959

Certified Mail
Return Receipt Requested

DECISION

McIntosh Lumber Company : Public Sale

Manager's Decision Reversed

The McIntosh Lumber Company has appealed from a decision of the Manager rejecting its public sale application for the stated reason that the land is covered by Indian allotment application, Sacramento 050530, filed May 20, 1955, by Betty J. Z. Stapp. The Manager held that an Indian allotment application segregates the land from further filings and that subsequent applications for the same land must be rejected.

The Manager's decision is predicated upon 43 CFR, 1954 ed., 176.10(c) which reads as follows:

> "Where an allotment application under the fourth section, accompanied by a certificate from the Indian Office showing that the applicant is an Indian and entitled to allotment, as required, is found to be in all respects complete and is accepted by the land officer, it operates as a segregation of the land, and subsequent applications for the same land will be rejected."

This regulation was adopted by the Department in pertinent portion on February 1, 1928, 52 I.D. 383. Although, at first blush, it would appear that the Manager's action was in consonance with the governing regulations, the Indian allotment regulations were adopted prior to the enactment of the Taylor Grazing Act of June 28, 1934.

The public lands in California, together with lands in certain other states were temporarily withdrawn from settlement, location, sale or entry and reserved for classification, and pending determination of the most useful purpose to which such lands may be put as contemplated by the Taylor Grazing Act. This withdrawal is embodied in Executive Order No. 6910 of November 26, 1934.

It is clear, therefore that at the time the Indian allotment application was filed the lands in issue were not subject to disposal thereunder until such time as the lands are classified as suitable for such purpose under section 7 of the Taylor Grazing Act. 43 CFR, 1954 ed., 296.2 contemplated that where classification is required under section 7 of the Taylor Grazing Act, an application to enter land will be considered merely as a petition for its classification. It, therefore, follows that the Indian allotment application did not attach to the land but was merely a petition for the classification of the land for disposal. Cf. Alexander Bateman, A-27203 (November 9, 1955). Accordingly, the action of the Manager in treating the Indian allotment application as segregating the land was erroneous.

The Indian allotment application has subsequently been rejected by the Manager's decision of April 8, 1958, and no appeal having been taken from that decision by Mrs. Stapp, the case was closed on May 28, 1958.

An examination of the record shows that the lands in issue are valuable for forestry purposes and have been classified as suitable for retention in public ownership for management of the timber thereon. However, the records do not contain any specific data upon which an informed determination of this matter can be predicated.

It is our view that before a proper disposition of the land can be made in this case that further consideration must be given to the land pattern of other timber land in the area, both public and private with which the tracts sought might be effectively managed; the location, type, and control of access roads to the management unit including proposed roads where appropriate; the feasibility of timber management on the public timber land within the unit; and watershed, recreation, wildlife and other multiple use characteristics of the land including any special features, if any, that would be incompatible with private ownership. Such a determination is not based solely on the qualifications and needs of the person desiring to purchase the land.

Accordingly, the decision of the Manager is reversed and the case remanded for further appropriate consideration in the light of this decision.

For the Director:

DISTRIBUTION:
SS with case records Sac. 050530 and 051942
McIntosh Lumber Company (Regular Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

49261

LU(Sec.)

PUBLIC SALE * 2 Applications

PUBLIC LANDS * 7 Withdrawals

Land included in a stock driveway withdrawal is not subject to disposition under the public land laws and an application for the public sale of such land must be rejected.

C. Howard Shomate, Los Angeles 0156971 (February 16, 1959)

In reply refer to:
Los Angeles 0156971
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 16, 1959

Certified Mail
Return Receipt Requested

DECISION

C. Howard Shomate	:	Public Sale

Manager's Decision Affirmed

C. Howard Shomate has appealed from a decision of the Manager, dated June 18, 1958, which rejected his public sale application because the lands applied for were withdrawn from settlement, sale or entry in 1934, by Stock Driveway Withdrawal No. 235.

The appellant states that since he owns land bordering on three sides the 40 acre tract applied for, and since his 280 acre tract is, in turn, surrounded by land withdrawn for stock driveway purposes, the sale of the 40 acres to him would not impair the utility of the stock driveway.

The record verifies the status of the lands as reported by the Manager. The withdrawal has not been revoked. The applicable regulations provide that lands withdrawn for stock driveways are not subject to entry or disposition, and applications for the acquisition of lands so withdrawn will be rejected by the Manager. 43 CFR 295.7(c). The Department has held that lands which have been withdrawn are not subject to appropriation or disposition under the public land laws while the lands remain in that status, and that applications may not be held in suspense pending the restoration of the land to entry. Keith Specking et al. v. Charles S. Carter et al., A-26190 (July 21, 1951); Effie Ellen Cox, A-27175 (December 12, 1955).

The decision of the Manager is therefore affirmed.

This action is without prejudice to the appellant's applying for the land under the applicable laws in the event the land is restored to entry at some future time. However, the appellant has not acquired any preference right to the land by virtue of having filed an application during the period of withdrawal; it is the settled rule that no rights are acquired by an application if, when it is made, the land sought is not subject to appropriation. Guy C. Riddell, A-24055 (January 24, 1946); John LaRay Hunt, Jr., v. State of Utah, A-24029 (May 16, 1945).

Mr. C. Howard Shomate is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. C. Howard Shomate (Certified Mail)
Lands Staff Officer
Appeals List No. 1
EVJ

49261

appeal to Sec
affirmed A-28152 1-14-60

IN REPLY REFER TO:

Sacramento 056785
Public Sale
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

MAY 25 1959

Certified Mail
Return Receipt Requested

DECISION

James P. Corbin :

Appeal from Decision of
February 19, 1959
Notice of Appeal filed
March 10, 1959

Appeal Dismissed

For the reason listed below your appeal to the Director, Bureau of Land Management, is hereby summarily dismissed (43 CFR 221.98):

☐ No statement of reasons has been filed in support of the appeal, and the time for filing the statement has expired. (43 CFR 221.3).

☐ Your statement of reasons for your appeal (or your request for extension of time to file a statement of reasons) was filed in this office, but it was filed late. (43 CFR 221.3). It was not received here until

☒ You have not served the adverse party named in the decision below with a copy of ☒ the notice of appeal, and/or ☒ the statement of reasons for the appeal, in the manner prescribed in 43 CFR 221.95. (43 CFR 221.4).

The dismissal of an appeal for failure to comply with the above requirements is mandatory. We have enclosed Form 4-1364 which contains the cited regulations.

You are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in enclosed Form 4-1365. 1/ If you do not appeal we will close the case and return the record to our State Supervisor for further appropriate action.

Director
For the
A. H. Furr

Enclosures 2

1/ The adverse~~party~~ to be served~~is~~:

Grover C. Long
c/o Harry J. Englebright
700 Crocker-Anglo Bank Bldg.
Sacramento 14, California

Albert J. Ingalls
179 Tivoli Way
Sacramento, California

Copy to: Adverse Parties; SO (Calif.); LO (Sacramento);

Appeal to Sec. 8-15-
Approved A

Mr. C. Howard Shomate is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as [illegible] enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

DEPT OF INTERIOR
MAY 29 4 11 PM 1959
BUREAU OF LAND MANAGEMENT

For the Director:

Enclosure

DISTRIBUTION:
Mr. C. Howard Shomate (Certified Mail)
Lands Staff Officer
Appeals List No. 1
EWJ

49261

LU(Sac)

PUBLIC SALE * 1 **Generally**

PUBLIC LANDS * 1 **Generally**

Land valuable for gold is not subject to disposal at public sale.

Lands valuable for a mineral locatable under the U. S. mining laws is not subject to disposal under the public sale law.

Elvira V. Merino, Sacramento 050742 February 20, 1959)

In reply refer to:
Sacramento 050742
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 20, 1959

Certified Mail
Return Receipt Requested

DECISION

Elvira V. Merino	:	Public Sale

Manager's Decision Affirmed

Elvira V. Merino has appealed from a decision of the Manager which rejected her public sale application for the reason that the land applied for had been classified as mineral in character.

The land embraced in the public sale application consists of two isolated tracts, which were delineated by Mineral Surveys Nos. 5843 and 5844. The mineral examination disclosed that the land is valuable for gold and that there are four unpatented mining claims * on the land, owned by William L. Metcalf of Jackson, California. These claims are located in the Potter Ridge Mining District five miles southeast of Coarse Gold in Madera County. The Potter Ridge District contains a belt of schist and slate from 3 to 5 miles wide. Granite dikes, from a few feet to 1/4 mile wide cut the schist and slate in many places. This belt carries most of the gold bearing veins of the county.

The appellant contends that the land is not mineral in character, but has submitted no evidence to buttress her contention. A bare unsupported allegation that the land has no mineral value is not sufficient to overcome a finding by the Bureau that the land does have mineral value. Cf. Clarence John Cox, A-23434 (December 18, 1942).

Lands which are valuable for gold are not subject to disposal at public sale. Ruth Cynthia Kress, A-25349 (August 6, 1948). The Department has stated that lands which are valuable for minerals locatable under the United States mining laws are not subject to disposal under the public sale law. Buck Willcoxson, A-27402 (December 17, 1956). The appellant's application was properly rejected. Carl H. Impink et al., Los Angeles 094097 etc. (August 28, 1958).

Accordingly, the decision of the Manager is affirmed.

---

* M.S. 5843 - Carnation
M.S. 5844 - Sierra View No. 1
M.S. 5844 - Sierra View No. 2
M.S. 5844 - Sierra View No. 3

Mrs. Elvira V. Merino is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken, then the adverse party to be served is:

Mr. William L. Metcalf

Jackson, California

For the Director:

Enclosure

DISTRIBUTION:

Mrs. Elvira V. Merino (Certified Mail)
Mr. William L. Metcalf (Regular Mail)
Lands Staff Officer
Appeals List No. 1
AIR

LO (Sac)

CLASSIFICATION * 3 Lands mineral in character

PUBLIC SALE * 1 Generally ✓

PUBLIC LANDS * 1 Generally

Land valuable for gold is not subject to disposal at public sale.

Lands valuable for a mineral locatable under the United States mining laws is not subject to disposal under the public sale law.

Patrick J. McAuley, Sacramento 047277 (March 12, 1959)

In reply refer to:
Sacramento 047277
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 12, 1959

Certified Mail
Return Receipt Requested

DECISION

Patrick J. McAuley : Public Sale

Manager's Decision Affirmed

Patrick J. McAuley has appealed from a decision of the Manager which rejected his public sale application for the reason that the land applied for had been classified as mineral in character.

The report of field examination discloses that the tract lies on an east-west mineralized zone that extends from Marjon Mine (two miles east) to the many mines and prospects in the Esmeralda Mining District (four miles west). This zone roughly follows the ridge between Indian and San Antonio Creeks, and is marked by numerous prospect pits and shafts. The examiner found that there have been discoveries of gold in the land and that the tract is covered in part by three unpatented mining claims. The examiner concluded that the land is mineral in character, valuable for gold.

The appellant contends that the land is not mineral in character, but has submitted no evidence to buttress his contention. A mere statement by the appellant that the facts are not as reported in the field examination is not sufficient to rebut the findings embodied in a report of field examination. Cf. Mary Refugio Jackson et al., A-27236 (February 29, 1956).

Lands which are valuable for gold are not subject to disposal at public sale. Ruth Cynthia Kress, A-25349 (August 6, 1948). The Department has stated that lands which are valuable for minerals locatable under the United States mining laws are not subject to disposal under the public sale law. Buck Willcoxson, A-27402 (December 17, 1956).

Accordingly, the decision of the Manager is affirmed.

Mr. Patrick J. McAuley is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in

43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. Orrin K. Airola, Attorney for Appellant (Certified Mail)
Mr. Patrick J. McAuley (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

file
dist & notation done

PUBLIC SALE * 3 Classification

CLASSIFICATION * 3 Lands Mineral in Character

MINING CLAIMS * 10 Mineral Land

Pursuant to 43 CFR 250.8(a), mineral lands may be sold only if there is a specific statutory authority for the sale of the land valuable for that mineral with a reservation of the mineral to the United States, and lands valuable for gold are not within the class of lands saleable with an appropriate reservation.

An adverse classification to the disposal of land by public sale will not be disturbed in the absence of clear and substantial evidence of error in the classification.

John Vincent Gallagher, Sacramento 053661 (March 20, 1959)

In reply refer to:

Sacramento 053661
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 20, 1959

Certified Mail
Return Receipt Requested

DECISION

John Vincent Gallagher : Public Sale

Decision of Manager Affirmed

John Vincent Gallagher has appealed from the Manager's decision, dated August 6, 1958, rejecting his public sale application for the stated reason that the land is mineral in character and not subject to public sale disposal.

The land is embraced within the Lucky Strike mining claim and a field examination shows the land is valuable for gold and mineral in character. The observed gold is small in size and reported to be of high refinement.

The appellant asserts that he does not believe the land to be mineral in character to the extent that it could be profitably mined, and states he could better use it for agriculture because it fronts on his land.

The pertinent regulation, 43 CFR 250.8(a), provides that mineral lands may be sold only if there is a specific statutory authority for the sale of the land valuable for that mineral with a reservation of the mineral to the United States. Buck Willcoxson, A-27402, etc. (December 17, 1956). Lands valuable for gold are not within the class of lands saleable with an appropriate reservation.

An adverse classification to the disposal of land by public sale will not be disturbed in the absence of clear and substantial evidence of error in the classification by the Bureau. Orie W. Robison, A-27609 (July 22, 1958). The appellant has failed to submit such evidence and merely asserted his opinion as to the best use of the land, unbuttressed by evidence. Trained Bureau employees have examined the land and found mineralization of placer gravels distributed in a manner which precludes nonmineral classification. These findings are further supported by a report of the Geological Survey that the land may be valuable for gold.

Accordingly, the decision of the Manager is affirmed.

Mr. John Vincent Gallagher is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal, there must be strict compliance with the regulations.

If an appeal is taken, then the adverse party to be served is:

Mr. Ernest H. Carter
Lucky Strike Claim
Smartville, California

For the Director:
John B Piccolo

Enclosure

DISTRIBUTION:

Mr. John Vincent Gallagher (Certified Mail)
Mr. Ernest H. Carter (Regular Mail)
Lands Staff Officer
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
JHO'D

LO(Sac)

PUBLIC SALE * 3 Classification

An application for the public sale of land which is neither isolated nor mountainous nor too rough for cultivation must be rejected as such land cannot be sold under the public sale law.

Wade Joshua Gessell, Los Angeles 088244 (March 27, 1959)

LO

In reply refer to:
Los Angeles 088244
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 27, 1959

Certified Mail
Return Receipt Requested

DECISION

Wade Joshua Gessell	:	Public Sale

Decision of the Manager Affirmed

Wade Joshua Gessell has appealed from a decision of the Manager rejecting his public sale application because the land is neither isolated nor too rough and mountainous for cultivation.

The lands are located in the northeastern part of Kern County, California. The community of Weldon, California, lies approximately 10 miles northwest of the lands. Access to the lands may be made by county maintained dirt road. The records indicates that the land is not isolated. The field examination disclosed that for the most part, the land is fairly level to slightly rolling, and that the greater portion of the tracts is not mountainous or too rough for cultivation. The land was therefore properly classified as not suitable for disposal by public sale. Albert N. Froom, A-27124 (May 23, 1955).

The question in issue is one of proper classification and the appellant has submitted no positive and substantial evidence that the classification of the land as not suitable for disposal by public sale is erroneous. The Department has stated that an applicant for public lands who appeals from an adverse classification has the burden of showing in what respect the adverse classification is in error. Anderson O. Whitener, A-27626 (December 3, 1958).

The appellant's statement of reasons for his appeal has been carefully considered. It provides no basis for changing the classification of the land. The appellant's application was properly rejected. Elmer Olson, Wyoming 036387 (February 18, 1959).

Accordingly, the decision of the Manager is affirmed.

Mr. Wade Joshua Gessell is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. Wade Joshua Gessell (Certified Mail)
Lands Staff Officer
Appeals List No. 1
AIR

50991

appeal to Sec
affirmed in part: remanded
A-28101 12-1-59

PUBLIC SALE * 3 Classification

An application for the public sale of land which is neither isolated nor too rough for cultivation must be rejected as such land cannot be sold under the public sale law.

Marie H. Caldwell, Los Angeles 0150015 (March 30, 1959)

In reply refer to:
Los Angeles 0150015
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 30, 1959

Certified Mail
Return Receipt Requested

DECISION

Marie H. Caldwell : Public Sale

Decision of the Manager Affirmed

Marie H. Caldwell has appealed from a decision of the Manager rejecting her public sale application because the land is neither isolated nor too rough and mountainous for cultivation.

The land is located in San Bernardino County, California, between Lucerne Valley and Apple Valley. The records indicates that the land is not isolated. The field examination disclosed that for the most part, the land is fairly level to slightly rolling and has a gradual slope of approximately three degrees to the west; and that the greater portion of the tract is not mountainous or too rough for cultivation. The tract was therefore properly classified as not suitable for disposal by public sale. Albert N. Froom, A-27124 (May 23, 1955).

The question in issue is one of proper classification and the appellant has submitted no positive and substantial evidence that the classification of the land as not suitable for disposal by public sale is erroneous. The Department has stated that an applicant for public lands who appeals from an adverse classification has the burden of showing in what respect the adverse classification is in error. Anderson O. Whitener, A-27626 (December 3, 1958).

The appellant's statement of reasons for her appeal has been carefully considered. It provides no basis for changing the classification of the land. The appellant's application was properly rejected. Elmer Olson, Wyoming 036387 (February 18, 1959).

Accordingly, the decision of the Manager is affirmed.

Mrs. Marie H. Caldwell is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mrs. Marie H. Caldwell (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

509?1

LD(Sac)

PUBLIC SALE * 1 Generally

PUBLIC LANDS * 1 Generally

Land valuable for gold is not subject to disposal at public sale.

Lands valuable for a locatable mineral under the United States mining laws is not subject to disposal under the public sale law.

Adolph P. Galli, Sacramento 054403 (March 31, 1959)

RO

In reply refer to:

Sacramento 054403
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 31, 1959

Certified Mail
Return Receipt Requested

DECISION

Adolph P. Galli : Public Sale

Decision of the Manager Affirmed

Adolph P. Galli has appealed from a decision of the Manager rejecting his public sale application for the reason that the land applied for had been classified as mineral in character.

The lands is located ¼ mile northeast of Pine Grove in Central Amador County, California. The mineral examination disclosed that the land is covered by mining claims and that the tracts are valuable for gold. On the basis of past mining history, present exposures, and information obtained from the mining claimants and from publications of the California Division of Mines, the land was classified as mineral land not suitable for disposal under the public sale law.

The appellant contends that the land is not mineral in character, but has submitted no evidence to buttress his contention. Bare unsupported allegations that the land has no mineral value are not sufficient to overcome a finding by the Bureau that the land does have mineral value. Cf. Clarence John Cox, A-23434 (December 18, 1942).

Lands which are valuable for gold are not subject to disposal at public sale. Ruth Cynthia Kress, A-25349 (August 6, 1948). The Department regulations provide that mineral lands may be sold only if there is a specific statutory authority for the sale of land valuable for that mineral with a reservation of the mineral to the United States. (43 CFR, 1954 ed., sec. 250.8(a)). Lands valuable for gold are not within the class of lands saleable with an appropriate reservation. Furthermore, the Department has stated that lands which are valuable for minerals locatable under the United States mining laws are not subject to disposal under the public sale law. Buck Willcoxon, A-27402 (December 17, 1956). The appellant's application was properly rejected. Elvira V. Merino, Sacramento 050742 (February 20, 1959).

Accordingly, the decision of the Manager is affirmed.

Mr. Adolph P. Galli is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. Adolph P. Galli (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

LO(Sale)

PUBLIC SALE * 3 **Classification**

An application for the public sale of land which is neither isolated nor mountainous nor too rough for cultivation must be rejected as such land cannot be sold under the public sale law.

That land may not be suitable for cultivation due to adverse water conditions does not afford a sufficient basis for disposal of the land under the second proviso of the public sale law.

Francis Marion Knight, Los Angeles 0150150 (April 1, 1959)

fo

In reply refer to:
Los Angeles 0150150
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 1, 1959

Certified Mail
Return Receipt Requested

DECISION

Francis Marion Knight : Public Sale

Decision of the Manager Affirmed

Francis Marion Knight has appealed from a decision of the Manager rejecting his application for public sale of certain land under the second proviso of the public sale law for the reason that a field examination disclosed that the land is not mountainous or too rough for cultivation and therefore cannot be sold under the second proviso of the public sale act (43 U.S.C., 1952 ed., sec. 1171).

The land is located in the Mojave Desert region of San Bernardino County in southern California. The field examination disclosed that the topography of a major part of the land is sloping and rolling and that the greater portions of the tracts are not mountainous or too rough for cultivation.

The appellant contends that many applications for desert land entry in the same general area have been denied on the basis of the land not being suitable for cultivation, that development of water for irrigation is remote, and that the land is too rough for cultivation.

The report of field examination indicates that the lands have no agricultural value due to adverse climatic conditions which prohibit the use of the land for dry farming, and that adverse ground water conditions restricts any irrigation of the land. However, that the land may not be suitable for cultivation due to adverse water conditions does not afford sufficient basis for disposal of the land under the second proviso of the public sale law.

Disposal of lands under the public sale law is discretionary in the Secretary of the Interior or his delegated representative. The authorized officer may classify land for disposal at public sale and may authorize the sale provided he determines, in accordance with the applicable regulations, that the land is an isolated or a rough or mountainous tract, as the case may be (43 CFR 250.4). Examination of the land in question disclosed it to be neither isolated, nor mountainous or too rough for cultivation within the meaning of the law, and it was accordingly classified as not suitable to be offered at public sale. An application for the public sale of land which is neither isolated nor mountainous nor too rough for cultivation must be rejected as such land cannot be sold under the public sale law. Albert N. Froom, A-27124 (May 23, 1955).

The appellant has submitted no positive and substantial evidence to refute the classification of the land as not suitable for disposal at public sale, and in the absence of an error which appears on the face of the record, the classification will not be disturbed. Cf. Mary Refugio Jackson et al., A-27236 (February 29, 1956). The Department has stated that an applicant for public lands who appeals from an adverse classification has the burden of showing in what respect the adverse classification is in error. Anderson O. Whitener, A-27626 (December 3, 1958).

The reports of field examination indicate that the lands are suitable for, and are being considered for development under the Small Tract Act of June 1, 1938. (52 Stat. 609), as amended.

Since the land is not mountainous or too rough for cultivation and it is not isolated within the purview of the public sale law, the application was properly rejected. John D. and Pauline H. Moore, Los Angeles 0142940 (September 25, 1958).

The decision of the Manager is affirmed.

Mr. Francis Marion Knight is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Hon. Gordon L. McDonough, House of Representatives
Mr. Francis Marion Knight (Certified Mail)
Lands Staff Officer
Appeals List No. 1
AIR

LO (Sac)

RULES OF PRACTICE * 11 Statement of Grounds

Where an appellant fails to state reasons for his appeal from a decision of the Manager, as required by the rules of practice, the appeal will be dismissed.

George R. Heath, Sacramento 048350 (April 22, 1959)

LO

In reply refer to:

Sacramento 048350
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 22, 1959

Certified Mail
Return Receipt Requested

DECISION

George R. Heath : Public Sale

Appeal Dismissed

George R. Heath has appealed from a decision of the Manager which rejected in part his public sale application because the land had been classified as not suitable for disposal by public sale.

In the notice of appeal, the appellant does not point out wherein the decision of the Manager is believed to be erroneous, and he has not filed a separate statement of the reasons for the appeal. Consequently, the appellant has failed to state reasons for his appeal, as required by the rules of practice, and the appeal is dismissed. Duncan Miller, 65 I.D. 290 (1958). See also Duncan Miller, A-27893 (March 5, 1959).

Mr. George R. Heath is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:
Mr. George R. Heath (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

52694

PUBLIC SALE * 3 Classification

Where a public sale application is rejected on the ground that the land is susceptible of timber management by this Bureau, the case will be remanded for further consideration if the record is inconclusive as to the proper classification of the land.

Claude T. Smith, Sacramento 051096 (April 24, 1959)

In reply refer to:
Sacramento 051096
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 24, 1959

DECISION

Claude T. Smith : Public Sale

Case Remanded

Claude T. Smith has appealed from a decision of the Manager rejecting his public sale application for an isolated tract because the land had been classified as valuable for retention in Federal ownership for timber management purposes.

Appellant contends that the land is not an integral part of a timber management unit; that the tract and much of the public domain in the general area, are by their very scattered nature, not well adapted to effective, efficient, and economical management by the Bureau; and that there are a few trees on the land of commercial quality but not in sufficient quantity to justify an economic operation.

Examination of the record shows that it is inconclusive on the issues posed. It is our view that before a proper classification of the land can be made in this case that further consideration must be given to the land pattern of other timber land in the area, both public and private with which the tract sought might be effectively managed; the location, type, and control of access roads where appropriate; the feasibility of timber management on the public timber land within the unit; 1/ and recreation, wildlife, and other multiple use characteristics of the land including any special features, if any, that would be incompatible with private ownership.

1/ A plat should be prepared showing the pertinent features of the timber unit, such as distribution, approximate volume and value of timber, accessibility of timber unit, and other factors relating to the proper tenure of the unit as a whole.

Therefore, the case is remanded to the Manager through the Bureau's State Supervisor at Sacramento, California, for further consideration of the proper classification of the land. 2/

For the Director:

DISTRIBUTION:

Mr. Claude T. Smith (Regular Mail)
State Supervisor with Sacramento 051096
Lands Staff Officer
Appeals List No. 1
ALR

2/ The record indicates that the land is affected by a mining claim, and the Geological Survey has reported that the land may be valuable for gold. Lands valuable for a locatable mineral under the United States mining laws are not subject to disposal under the public sale law. Buck Willcoxson, A-27402 (December 17, 1956). If it is determined that the land is otherwise proper for disposal under the public sale law, a mineral examination of the land should be made to determine whether the land is in fact valuable for gold. Cf. J. W. Allen et al. v. E. A. Mohler et al., A-26931 (November 5, 1954). Even if the land should be determined to be non-mineral in character, the land could not be disposed of unless and until the mining claim had been declared null and void in appropriate proceedings.

appeal to Sec 1-13-60
affirmed A-28134
LO (Sac)

PUBLIC SALE * 1 Generally: Payment of Publication Cost
* 5 Preference Rights
* 6 Award of Lands

ADJUDICATION * 7 Fees and Payments: Payment of Publication Cost

Where a preference right claimant is declared purchaser of the tract but fails to comply with 43 CFR 250.12(a), which requires that a person awarded land must reimburse the public sale applicant for the cost of publication and file evidence thereof in the land office within 10 days, his bid is properly rejected and the bid next in order will be accepted.

Although a contiguous owner has a statutory preference right to purchase land offered at public sale, that right is merely inchoate, and the right to purchase must be rejected where the claimant does not comply with the clear and mandatory provisions of the regulations.

John N. Pomeroy, Sacramento 053144 (April 24, 1959)

LO

In reply refer to:

Sacramento 053144
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 24, 1959

Certified Mail
Return Receipt Requested

DECISION

John N. Pomeroy : Public Sale

Manager's Decision Affirmed

John N. Pomeroy has appealed a decision of the Manager which rejected his preference right bid and declared Mary E. Doherty *et al.* the purchasers of an isolated tract of land in California.

The facts which give rise to the appeal are essentially as follows. Mary E. Doherty, *et al.*, were high bidders at a public sale held pursuant to their application, Sacramento 053144. Within the time required by the regulations, John N. Pomeroy submitted satisfactory evidence of ownership of adjoining land, met the high bid, and on January 20, 1958, was declared by the Manager the purchaser of the tract, subject to the condition that Mr. Pomeroy file in the land office "within 10 days from service of this decision, as required by 43 CFR 250.12(a) * * *, evidence of reimbursement to Margaret E. Doherty, *et al.*, the applicants, for the cost of publication * * *."

The Manager's decision was received by H. S. Gilmore, of Gilmore and Gilmore, on January 21, 1958. Ten days later H. S. Gilmore requested that the Manager allow an additional ten days within which to file proof of payment of publication fees, stating they had forwarded the decision to Mr. Pomeroy but had received no response from him. It appears that Mr. Pomeroy was absent from his home until February 2. The following day, February 3, Mr. Pomeroy mailed a check to the public sale applicants, payable to "Marget E. Doherty et al.", for $36, the ascertained cost of publication. The check was not accepted by the applicants because the payee was designated as "Marget E. Doherty et al.", instead of Mary E. Doherty, Margaret D. Abele, and Maureen D. Pederson and the check was not tendered within the ten day period allowed by the regulation.

In a decision of February 17, 1958, the Manager declared Mary E. Doherty et al., the purchasers and rejected the preference right bid of John N. Pomeroy because he had not complied with 43 CFR 250.12(a).

The record contains a document, signed by Mr. Pomeroy on December 5, 1957, authorizing Gilmore and Gilmore to act as his agents relative to Sacramento 053144, to accept service in his name, "and to do any and all things necessary to the purpose for which they are appointed." Mr. Pomeroy must suffer whatever consequences result from the acts of his appointed agents. Cf. Albert H. Dobry et al., 64 I.D. 116 (1957).

The applicable regulation, 43 CFR 250.12(a) provides in part as follows:

> "If the applicant for the sale is an unsuccessful bidder, the person awarded the land must reimburse and pay directly to him the amount expended for publication of notice and file evidence thereof in the district land office within 10 days from the date he is declared the purchaser. If the evidence is not furnished, the manager will reject the bid and will accept the bid next in order, subject to the same conditions. * * *"

No provision is made in the regulation for an extension of time beyond the 10 day period. Cf. Sheridan P. and Lottie M. Windsor, A-26241 (October 30, 1951); Guy Curless et al., A-26910 (July 28, 1954). In the latter decisions the Department pointed out that the purpose of the above regulation was entirely for the benefit of the unsuccessful applicants. Consequently, in the above decisions, the Department excused the failure to comply strictly with the regulation where the person awarded the land made a good faith attempt to comply with it and substantial compliance was prevented by a lack of cooperation on the part of the person to be protected by the regulation.

The record in the instant case shows no attempt was made to communicate with the applicants for the sale to reimburse them for the publication costs until February 3, 1958, which was after the expiration of the 10-day period. On February 3, 1959, the appellant mailed a check payable to "Marget E. Doherty, et al."

It is true that the Manager's decision of January 20, 1958, in the fifth paragraph thereof, provided that the appellant would be required to file in the land office within 10 days from the receipt of that decision evidence of reimbursement to "Margaret E. Doherty et al., the applicants * * *." (Emphasis added.) The Manager's decision, in the first paragraph thereof, correctly named the applicants for the sale as "Mary E. Doherty, Margaret D. Abele, and Maureen D. Pederson."

It is our opinion that the appellant could not have reasonably inferred from the Manager's decision that reimbursement was to be made by an instrument in which the applicants were to be designated as "Marget E. Doherty et al."

In view of the fact that the uncertified check of the appellant showed on its face the uncertainty of the payee, it is questionable whether it would have been paid on presentment to a bank. Such a check has been held not to be a negotiable instrument. See *Gordon* v. *Anderson*, 49 N.W. 86(189 However, even assuming the check could have been cashed by Mary E. Doherty, there is nothing in the record to show that she was authorized to accept reimbursement on behalf of the other two applicants for the sale.

It seems, therefore, that the check tendered by the appellant to constitute a valid tender of payment and substantial compliance with the controlling regulation, 43 CFR 250.12(a) should have properly designated on its face the names of the three applicants for the sale as the payees.

It is our opinion under the circumstances of this case that the tender of such a check by the appellant did not constitute even substantial compliance with the Manager's decision and the controlling regulation.

It is argued that Mr. Pomeroy has a statutory preference right to the land which cannot be defeated by a mere administrative rule or regulation. We do not find this argument to be persuasive.

The statute authorizing the sale of isolated or disconnected parcels of the public domain provides that "for a period of not less than thirty days after the highest bid has been received, any owner or owners of contiguous land shall have a preference right to buy the offered lands at such highest bid * * *." 43 U.S.C., 1952 ed., Supp. V, Sec. 1171.

The statutory preference right is at best an inchoate right, conditional upon compliance with applicable regulations. Cf. *Salvatore Megna, Philip T. Garigan*, 65 I.D. 33 (1958). The Department has held that where an applicant is to be deprived of a statutory preference right because of his failure to comply with the requirements of a regulation, that regulation should be spelled out so clearly that there is no basis for disregarding the applicant's noncompliance therewith. *Donald C. Ingersoll*, 63 I.D. 397, 400 (1956). The provisions of 43 CFR 250.12(a) are clear.

Since the appellant is not deemed to have made even substantial compliance with the above regulation, we conclude that his failure to comply strictly with the 10-day provision of the regulation should not be excused. Accordingly, the Manager's decision rejecting his bid and accepting the bid next in order is affirmed. Cf. *Sheridan P. and Lottie M. Windsor*, *supra*; *Guy Curless et al.*, *supra*.

Mr. John N. Pomeroy is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Pomeroy, then the adverse parties to be served are:

Mary E. Doherty, Margaret D. Abele,
Maureen D. Pederson
c/o Ernest T. Hubbard
Attorney at Law
605 Jay Street
Colusa, California

J P Beirne
Acting Director

Enclosure

DISTRIBUTION:

Thelen, Marrin, Johnson & Bridges, Attorneys at Law (Certified Mail)
Gilmore & Gilmore, Attorneys at Law (Certified Mail)
Mr. John N. Pomeroy (Regular Mail)
Mr. Ernest T. Hubbard, Attorney at Law (Regular Mail)
Miss Mary E. Doherty (Regular Mail)
Mrs. Margaret D. Abele (Regular Mail)
Mrs. Margaret D. Pederson (Regular Mail)
Lands Staff Officer
Appeals List No. 1
EVJ/JHO'D

54561

LO(Sec)

PUBLIC SALE * 6 Award of Lands

Awards of lands made to preference right claimants upon their failure to agree on a division of the tract offered at public sale, will not be disturbed where the appellants have not submitted evidence to controvert the substantial showing assembled from field examination which was the basis for the awards, and where the division appears equitable and in accord with the regulation, 43 CFR, 1957 Supp., 250.11(b)(3).

Charlotte E. Berberick et al., Sacramento 056391, etc. (June 23, 1959)

LO

In reply refer to:

Sacramento 056391
056390
047668
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 23, 1959

Certified Mail
Return Receipt Requested

DECISION

Charlotte E. Berberick et al. : Public Sale

Decision of Manager Affirmed

Charlotte E. Berberick, Lila M. Elliott, and Martin H. Melendy, who jointly claim a preference right to purchase land at public sale, have appealed from a decision of the Manager, awarding certain legal subdivisions of public land to themselves and two other preference right claimants. This decision was rendered in the absence of an agreement among the claimants for a division of the tract offered at public sale. 43 CFR, 1957 Supp., 250.11(b)(3).

Particularly the appellants request the division of the lands be amended to permit them to relinquish approximately 80 acres of the land awarded to them 1/ for approximately 80 acres of the land 2/ included in the award to Elbert F. and Alta B. Chittenden. In support of this request, the appellants assert fencing costs would be less and the lands would be more adaptable to the use which they propose, that is, cattle grazing, and would minimize trespassing on their lands by sheep owned by the Chittendens.

The Chittendens responded to the appeal, stating there is no trespass problem of their sheep crossing onto adjoining lands in the use of the lands in question. They assert the fencing problem and the fencing calculations set forth by the appellants to be entirely out of proportion to the respective needs of the various claimants. They urge

---

1/ Lot 3 and NE$\frac{1}{4}$SW$\frac{1}{4}$ sec. 18, T. 16 S., R. 7 E., M.D.M., California.

2/ S$\frac{1}{2}$NW$\frac{1}{4}$ sec. 13, T. 16 S., R. 6 E., M.D.M., California.

the Manager's division of the lands be retained or revised so that they will receive a full one-third of the acreage; although they received the lesser acreage 3/ in the allocation of subdivisions made by the Manager, they state they are agreeable to the division which was made because they were awarded land which they require and which they believe to be somewhat better range land than some of the other parcels.

The Manager's decision recited that his determination for division of the lands took into account all factors, including topography, and all statements set forth by each preference right claimant, pursuant to the regulation cited. The record supports this statement of the Manager and, upon review of all matters set forth in the appeal, no change in the Manager's apportionment appears warranted.

The record shows that the basis of the awards by the Manager was a report of field examination made of the lands offered at sale which indicated that topographic features divided the tract into natural management units. The pertinent regulation provides in part that in the event two or more preference right claimants cannot agree on a division of the tract offered for sale the land will be divided equitably, taking into consideration such factors as:

> "(i) the equalizing of the number of acres which each claimant will be permitted to purchase, (ii) desirable land use, based on topography, land pattern, location of water, and similar factors, and (iii) legitimate historical use * * *. If equitable considerations dictate, all of the subdivisions may be awarded to one of the claimants. * * *" 43 CFR, 1957 Supp., 250.11(b)(3).

The appellants have failed to submit evidence which would effectively controvert the substantial showing of record assembled by field examination of the land. The division of the lands proposed by the Manager appears equitable and in accord with the regulation cited. Ormand L. and Myrtle A. Hurt, A-27544 (February 15, 1958). The fact that an award of lands as proposed to the Chittendens would have the effect of inconveniencing or working an alleged hardship on another preference right claimant does not constitute an adequate basis for changing the award.

The decision of the Manager is affirmed.

3/ The Chittendens were awarded 280 acres, as compared with 367.62 acres and 345.36 acres awarded the other claimants.

Charlotte E. Berberick, Lila M. Elliott, and Martin H. Melendy are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Charlotte E. Berberick, Lila M. Elliott or Martin H. Melendy, then the adverse parties to be served are:

Elbert F. and Alta B. Chittenden
11 Palm Circle Road
Woodside, California

For the Director:

Enclosure

DISTRIBUTION:

Mr. John H. O'Brien, Attorney for Appellants (Certified Mail)
Mrs. Charlotte E. Berberick (Regular Mail)
Mrs. Lila M. Elliott (Regular Mail)
Mr. Martin H. Melendy (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MAG

56242-59

appeal to Sec
affirmed A-28219 LOfSec)

PUBLIC SALE * 6 Award of Lands

Where land offered at public sale consists of more than one legal subdivision, it is proper to divide the land among the preference right claimants, and the whole tract will not be awarded to the preference right claimant who applied for the sale unless equitable consideration dictates such an award.

Ferman B. and Helen E. Armstrong et al., Sacramento 049733 (July 15, 1959)

RO

In reply refer to:
Sacramento 049733
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 15, 1959

Certified Mail
Return Receipt Requested

DECISION

Ferman B. and Helen E. Armstrong :
: Public Sale
George C. and Zoe Anna Shipounoff :

Decision of the Manager Affirmed

Ferman B. Armstrong has appealed from a decision of the Manager, dated February 5, 1959, which allowed Ferman B. and Helen E. Armstrong and George C. and Zoe Anna Shipounoff 30 days from service of the decision within which to agree among themselves upon a division of certain lands and file evidence of the agreement with the land office.

The record reveals that on January 5, 1959, the SW$\frac{1}{4}$NW$\frac{1}{4}$, SW$\frac{1}{4}$SW$\frac{1}{4}$, sec. 10, T. 10 N., R. 9 E., M.D.M., California, were offered for sale pursuant to public sale application Sacramento 049733 filed by Ferman B. Armstrong under Section 2455 of the Revised Statutes, as amended (43 U.S.C., 1952 ed., sec. 1171). Fannie M. Keller was declared the highest bidder per her oral bid of $2,000.00 for the tracts. Action on the sale was suspended for 30 days to allow persons desiring to do so to exercise a preference-right claim to purchase the land (43 CFR 250.11).

Ferman B. and Helen E. Armstrong and George C. and Zoe Anna Shipounoff on January 26 and February 3, 1959, respectively, submitted preference right bids of $2,000.00, accompanied by satisfactory evidence of ownership of the whole title in fee to adjoining lands. 1/ Fannie M. Keller failed to submit evidence of ownership of the whole title in fee to adjoining lands during the 30-day preference-right period. Therefore, by decision of February 5, 1959, Mrs. Keller's bid was rejected 2/ and the Armstrongs and the Shipounoffs were allowed 30 days from service of the decision within which to reach an agreement as to a division of the lands. It is from this decision that Mr. Armstrong appeals.

1/ The Shipounoffs submitted also evidence of their citizenship and presented marital status of Mrs. Shipounoff.

2/ Mrs. Keller notified the Manager that she had no intention to file an appeal and requested the refund of the $2,000.00.

Section 2455 of the Revised Statutes, as amended, supra, under which the public sale of the land involved was ordered, provides that the Secretary of the Interior is authorized to order into the market and sell isolated tracts of the public domain:

> "* * * Provided, that for a period of not less than thirty days after the highest bid has been received, any owner or owners of contiguous land shall have a preference right to buy the offered lands at such highest bid price, and where two or more persons apply to exercise such preference right the Secretary of the Interior is authorized to make an equitable division of the land among such applicants * * *."

From this language it is clear that Congress in enacting the public sale law foresaw the possibility of two or more preference-right claimants exercising their preference-right claims to purchase the same land offered at public sale, and therefore, specifically provided in such case that the Secretary was authorized to make an "equitable" division of the land among such applicants. Obviously, any equitable division of land offered at public sale between conflicting preference-right claimants should be made only after due consideration of the relative need for the land of the claimants, as well as factors of land pattern, historical use, etc., and the Department has provided for such consideration where two or more legal subdivisions are sold (43 CFR, 1958 Supp., 250.11(b)(3)). This regulation provides in part as follows:

> "Where there is a conflict between two or more persons claiming a preference right of purchase, they will be allowed 30 days from receipt of notice within which to agree among themselves upon a division of the tracts by subdivisions. In the absence of an agreement an equitable division of the land will be made taking into consideration such factors as (i) the equalizing of the number of acres which each claimant will be permitted to purchase, (ii) desirable land use, based on topography, land pattern, location of water, and similar factors, and (iii) legitimate historical use, including construction and maintenance of authorized improvements. If equitable considerations dictate, all of the subdivisions may be awarded to one of the claimants. * * *"

The appellant alleges on appeal that he should not be forced to come to an agreement with the other preference right claimants in regard to a division of the land and implies that, in any event, he should be awarded all of the land in question. These allegations are apparently based on the fact that he applied for the sale of the land in 1954.

However, the Departmental regulations do not favor the preference right claimant who applied for the sale of the land where two or more subdivisions of land have been offered at the public sale. See 43 CFR, 1958 Supp., 250.11(b)(3). In such cases the preference right claimants are not forced to agree to divide the land but are merely given an opportunity for a period of 30 days to reach an agreement as to a division of the land among themselves. If no agreement is reached by the parties then the Manager makes an award of the land based upon the relative need of the parties for the land as well as the factors of historical use, land pattern, etc. See Joseph H. Greenhalgh, Charles O. Miller, A-27561, (May 6, 1958); 43 CFR, 1958 Supp., 250.11(b)(3).

Obviously, the Manager's decision of February 5, 1959, was in accordance with the Departmental regulations and it is hereby affirmed.

The preference right claimants are allowed 30 days from the receipt of this decision within which to submit an agreement to this office dividing the land among themselves by subdivisions. In the absence of the submission of such an agreement within the time allowed, the case will be remanded to the Manager to make an award of the land since the present record does not contain sufficient evidence upon which a final award of the lands could be based. See Joseph H. Greenhalgh, Charles O. Miller, supra.

For the Director:
John B. Ricciolo

Enclosure

DISTRIBUTION:

Mr. and Mrs. Ferman B. Armstrong (Certified Mail)
Mr. and Mrs. George C. Shipounoff (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

57714-59

PUBLIC SALES * 1 Generally

PUBLIC LANDS * 7 Withdrawals (National Forests)

Public lands withdrawn for national forest purposes are not subject to disposition under theppublic sale law.

Russell L. and Margaret J. Thibodo, Los Angeles 0160784 (October 1, 1959)

L 0

In reply refer to:

Los Angeles 0160784
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 1, 1959

Certified Mail
Return Receipt Requested

DECISION

Russell L. Thibodo :
Margaret J. Thibodo : Public Sale

Decision Affirmed

Mr. and Mrs. Russell L. Thibodo have appealed from a decision of the Chief, Land Adjudication Unit rejecting their above-identified application filed under the public sale law, as amended (43 U.S.C. 1952 ed., sec. 1171), for the reason the land applied for is located in a National Forest.

The records show that the land was made part of the San Jacinto Forest Reserve by Presidential Proclamation dated February 14, 1907. The Jacinto Forest Reserve is now part of the Cleveland National Forest. The land is under the jurisdiction of the United States Forest Service, Department of Agriculture.

Under the provisions of the public sale law, only unappropriated, vacant public land within or outside of grazing districts may be sold at public auction. Land reserved for national forest purposes is not of that character and therefore is not subject to disposition under the public sale law. Cf. Effie Ellen Cox, A-27175 (December 12, 1955)

The application was properly rejected.

Accordingly, the decision appealed from is affirmed.

Mr. and Mrs. Russell L. Thibodo are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director

Enclosure

DISTRIBUTION:

Mr. and Mrs. Russell L. Thibodo (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

62479-59

PUBLIC SALE * 3 Classification

Where specific evidence submitted by the appellant tends to negate a generalized classification report the case will be remanded for further detailed consideration.

Stringfellow Quarry, Los Angeles 0136827 (October 2, 1959)

In reply refer to:
Los Angeles 0136827

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 2, 1959

Certified Mail
Return Receipt Requested

DECISION

Stringfellow Quarry : Public Sale

Case Remanded

Stringfellow Quarry, a co-partnership, has appealed from a decision of the Acting Manager of the Los Angeles, California, Land Office, dated December 10, 1957, which rejected its public sale application for the reason that the land applied for, lots 1, 7, and 8 of sec. 2, T. 2 S., R. 6 W., SBM, California, had been classified as mineral in character.

The land in question is located on the western extension of the Jurupa Mountains, about three miles north and west of Riverside, California. The field report discloses that the rock formation of this rugged land consists of granites and some schists. The field examiner found that the granite is the same type of rock that has been quarried for years on the adjacent section, that it is hard, makes a good building material, and is not a common variety.

The appellant asserts that the land is not valuable for the granite in it, but that it is ideally suited for an industrial dump site similar to one the appellant operates in the vicinity. It states that the granite found in the land is not suitable for building block and that its only economical use is as "Rip-Rap" or "Jetty Ballast." The appellant further alleges that the present market for this type of stone is very small and that existing quarries more than take care of present demand. The evidence submitted by the appellant also tends to show that the cost of developing the site, quarrying the stone, and shipping it to the nearest available markets would require that the stone be marketed at a price double that of stone from existing quarries. To support its allegations, the appellant has submitted a detailed geologic examination of the land together with an affidavit of a practicing civil engineer who has had several years experience in the area where the lands are located.

The field report states only that the granite is of the same type of rock that has been quarried on an adjoining section for years and concludes, without further detail, that the land must be considered mineral in character and is not available for public sale.

30 U.S.C., sec. 21, states that, "in all cases lands valuable for minerals shall be reserved from public sale, * * *." In many instances, it has been held that a valuable mineral deposit exists only if its extraction is profitable and will justify expenditures to that end. Cf. United States v. Strauss, 59 I.D. 129 (1945). Thus, economic factors, while not of themselves determinative of the mineral character of the land, United States v. State of Utah, 51 L.D. 432 (1926), should be given considerable weight in evaluating geological data which will lead to a final determination.

It is not incumbent upon the Government to prove that land classified as mineral in character is more valuable for mining than for other purposes as this has no direct bearing on the mineral character of the land. However, a higher degree of proof for the mineral character is required as to lands to which are attached substantial values for non-mining purposes.

Since there is no evidence of record in this case which indicates that relevant economic factors were considered and the field report concludes only in general terms that the land is valuable for minerals, and in view of the specific reports supplied by the appellant that the granite is of a common variety for which there is little or no demand and cannot profitably be marketed, the case is remanded for further detailed consideration.

If, after considering all the criteria for determining the mineral character of the land, it is found that the land is suitable for disposal, the land may be ordered into the market and sold at public auction according to regulations.

Although the appellant has requested a hearing, there is no provision in the rules of practice for hearings on appeals. Classification of land is within the discretionary authority of the Secretary of the Interior and the Department has held that an applicant is not entitled, as a matter of legal right, to a hearing to determine the proper classification of land for which he has applied. Paul B. and Ruth M. Butler, A-27634 (August 26, 1958).

Stringfellow Quarry is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Dunson

Enclosure

DISTRIBUTION:

Lonergan & Jordan, Attorneys (Certified Mail)
Stringfellow Quarry (Regular Mail)
Lands Staff Officer
Minerals Staff Officer (3)
Appeals List No. 1
LLM

appeal to Sec Dec 59
affirmed A-28306
6-10-60

PUBLIC SALES * 1 Generally

* 2 Applications

It is proper to reject an application for the purchase of public land under the public sale law where the land is not isolated, and the applicants have not shown that they qualify to apply for the land under the mountainous or too rough for cultivation provision of the law.

Steve Wolfe, Nick Smoley, Jr., Los Angeles 0160435 (October 8, 1959)

In reply refer to:

Los Angeles 0160435
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 8, 1959

Certified Mail
Return Receipt Requested

DECISION

Steve Wolfe	:	Public Sale
Nick Smoley, Jr.	:	
	:	

Decision Affirmed

Messrs. Steve Wolfe and Nick Smoley, Jr., have appealed from the decision of the Chief, Land Adjudication Unit rejecting their above-identified application filed under the Public Sale law, as amended (43 U.S.C., 1952 ed., section 1171), for the reason the land applied for is not an isolated tract of land.

The records show that the land applied for is adjoined on the west side by other vacant unappropriated public land, and is not completely isolated by other land in non-Federal ownership.

While the appellants do not cite any error in the decision rejecting **their application,**they request that they be informed as to the reason for the rejection of their application after the land office had furnished them a list of public land including the land applied for, and the application form to be used in making application for the land.

There is nothing in the public land laws or the regulations thereunder which prohibits in these circumstances the filing of applications for public lands, and the necessary forms to be used in making such applications are furnished upon request. It is only after such applications have been filed that a determination can be made whether the land sought is subject to disposition under the particular law involved. The public sale law contemplates in part; (1) isolated or disconnected tracts of public land not exceeding 1520 acres, and (2) legal subdivisions not exceeding 760 acres, the greater part of each subdivision is mountainous or too rough for cultivation, may be ordered into the market and sold at public auction. Under the first proviso, that land must be completely isolated from other unappropriated public lands by other non-Federally owned lands or lands permanently reserved. See 43 CFR 250.6(b). Under the second proviso, the land need not be isolated, but must be classified as being mountainous or too rough for cultivation. The applicant for the latter class of lands must own or hold a valid entry on adjoining lands at the time he makes his application.

In the instant case, the land applied for is not an isolated tract ofland within the meaning of the public sale law. The applicants are not qualified to make application for the land under the second proviso of the public sale law, since they state in their application that they are not the owners of adjoining land and do not hold a valid entry on such land.

Accordingly, it was proper to reject the application filed by the appellants, Edwin Nevinski, A-27180 (November 14, 1955).

The decision appealed from is affirmed.

Messrs. Steve Wolfe and Nick Smoley, Jr., are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:
Messrs. Steve Wolfe and Nick Smoley, Jr. (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

62479-59

appeal to Sec. Dec 5 (
Reversed A-28296
6-13-60

PUBLIC SALE * 1 Generally

A public sale is properly vacated where it appears that a party would be deprived of a statutory preference right to purchase because of his noncompliance with certain requirements due to the ambiguity of the public sale preference right form.

Martin H. Shuler, Walter Y. Wentz, Los Angeles 0108594 (October 30, 1959)

20

In reply refer to:

Los Angeles 0108594
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 30, 1959

Certified Mail
Return Receipt Requested

DECISION

Martin H. Shuler, Appellant : Public Sale
Walter Y. Wentz, Appellee :
:

Sale Vacated

Martin H. Shuler has appealed to the Director from a decision of the Chief, Lands Adjudication Unit, Los Angeles, California, to the extent that the decision declared Walter Y. Wentz the purchaser of Parcel No. 2

Pursuant to the public sale application of Walter Y. Wentz, certain public lands were offered at public sale on January 7, 1959. The land in issue, hereinafter designated as parcel No. 2 consists of lot 2, sec. 26, T. 18 S., R. 3 E., S.B.M., California, comprising 27.10 acres. On January 8, 1959, the Chief, Lands Adjudication Unit, issued a decision which in applicable portion declared Martin H. Shuler, the high bidder for parcel No. 2 in the amount of $525. The appraised value of parcel No. 2 had been $136. The decision also recited in part:

> "Accordingly, applications for preference rights to purchase must be accompanied by proof of ownership at or after the date of sale, to the whole title in fee of the contiguous land consisting of a certificate of the local recorder of deeds or in abstract or certificate of title prepared and certified by an abstract or title company. The application * * * must also be accompanied with a postal money order * * * in the amount of $408 for parcel No. 2, which is three times the appraised valuation of this parcel. * * *." (Emphasis supplied).

On January 13, 1959, Mr. Wentz submitted the necessary money and a Form 4-1310 captioned "Certificate of Ownership" executed by the Union Title Insurance Company reciting that Walter Y. Wentz is the sole owner in fee simple of certain land adjoining parcel No. 2 as of December 8, 1953. The decision of February 12, 1959, treated Mr. Wentz's preference right claim as complying with the applicable regulations and awarded parcel No. 2 to him.

Mr. Shuler's appeal takes the position that one who fails to submit within 30 days after the date of the sale satisfactory proof of his ownership of contiguous land as of the date of the sale or as of a time within 30 days after the date of a public sale loses his preference right to purchase the land. This is a correct statement of the governing rules. Russel Liston, Hellen M. and E. J. Hutchins, A-27485 (October 21, 1957). That the Manager regarded Wentz's preference right claim as satisfactory did not vest any right in him to purchase the land. William H. Boyd, Clarence Virgil West, A-27440 (June 3, 1957).

Mr. Wentz asserts that the language on Bureau Form 4- 1310 (March 1956) is misleading. The form has an asterisk following the word"date" in the following phrase: "The undersigned certifies that the official records of ______________________, ________________ show
(County) (State)
that ______________________________________ is the sole owner in fee
(Name of Bidder or Applicant)
simple of the following-described lands as of ______________________
(date)*

The asterisk refers to a footnote which recites as follows: "For a bidder, the date shown must be the date of the sale or any date within 30 days after the sale; for an applicant for the sale of lands which are mountainous or too rough for cultivation, the date shown must be the date of his application."

The form is designed to serve two purposes, (1) as a basis for a preference right claim, or (2) to show ownership of adjoining land as the basis for an application to purchase land which is not isolated, but the greater part of which is mountainous or too rough for cultivation. See 43 U.S.C., sec. 1171. Admittedly, the footnote in question is susceptible of the interpretation which the appellee alleges he placed upon it.

It is noteworthy that the Manager apparently considered the proof tendered as satisfactory. It must be concluded that at best the form 4-1310 is ambiguous. Donald C. Ingersoll, 63 I.D. 397 (1956), holds that where an applicant is to be deprived of a statutory preference right because of his failure to comply with the requirements of a regulation, that regulation should be so clear that there is no basis for the applicant's noncompliance therewith. Fairness dictates that the same standard of clarity be applied to forms prepared and issued by the Bureau where an applicant is to be deprived of a statutory preference right to purchase lands at public sale.

In view thereof, the sale is vacated and when this decision becomes final the case will be remanded to the Manager through channels for appropriate action.

Walter Y. Wentz and Martin H. Shuler are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

In the event of an appeal by Mr. Wentz, the adverse party to be served is:

Martin H. Shuler
8131 Vicksburg Avenue
Los Angeles 45, California.

In the event of an appeal by Mr. Shuler, the adverse party to be served is:

Walter Y. Wentz
Hotel Keystone
943 Tenth Avenue
San Diego 1, California

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Martin H. Shuler (Certified Mail)
Mr. Walter Y. Wentz (Certified Mail)
Lands Staff Officer
Appeals List No. 1
FF

appeal to Sec
affirmed A-28328
7-7-60

PUBLIC SALE * 5 Preference Rights

A Certificate of Ownership which merely shows ownership of contiguous land prior to the date of a public sale is not satisfactory to establish a preference right to purchase.

Paul A. and Blanche E. Cook, Los Angeles 0134254 (November 12, 1959)

In reply refer to:
Los Angeles 0134254
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 12, 1959

Certified Mail
Return Receipt Requested

DECISION

Paul A. and Blanche E. Cook : Public Sale

Decision of the Chief, Lands Adjudication Unit Affirmed

Paul A. and Blanche E. Cook have appealed from a decision of the Chief, Lands Adjudication Unit, Los Angles, California, Land Office, dated May 7, 1959, rejecting their preference right claim and declaring as purchasers Bernard E. and Rose Roth Loper.

The appellants were declared purchasers of certain lands offered at public sale by a decision dated April 27, 1959. The basis for this decision was the belief that the appellants had submitted the first satisfactory preference right claim for the tract. However, a review of this preference right claim was conducted subsequent to the decision of April 27, and it was noted that the Certificate of Ownership (Form 4-1310) submitted by the appellant certifies only that they were sole owners in fee simple of contiguous land as of February 26, 1959, while the sale was held March 11, 1959. As a result of this discovery, the Land Office issued the decision from which the Cooks have appealed vacating their decision of April 27, and declaring the Lopers, who had filed a preference right claim a short time after the appellants, as purchasers.

Although the regulation, 43 CFR 250.11 (b), states, as the appellants have indicated, that a preference right may be asserted at any time prior to the commencement of the 30-day preference right period, a following paragraph, 43 CFR 250.11 (b) (ii), 1/ states with clarity that this asserted right must be supported, during the 30-day preference right period, by proof showing that the claimant owns adjoining property in fee simple at or after the date of the

---

1/ This regulation in applicable portion states:

"Failure to submit to the land office satisfactory proof during the 30-day period after the highest bid has been received will cause the preference right to be lost as to the particular public sale. Such proof must consist of *** an abstract *** or certificate of title *** showing that the claimant owns adjoining land in fee simple at or after the date of the sale.***" (Emphasis supplied).

date of the sale. Salvatore Megna, Phillip T. Garigan, 65 I.D. 33 (1958).

Since proof of ownership before the date of a sale is not proof of ownership of contiguous lands at or within 30 days after the date of the sale, the Certificate of Ownership submitted by the appellants did not entitle them to a preference right. Don C. Shafer, Thomas A. Miller, A-27645 (September 15, 1958).

Although the Land Office initially accepted the Certificate of Ownership as establishing the appellants as preference right claimants, it was proper to issue a corrective decision upon the discovery of the defect. Where a preference right claimant to land offered at public sale fails to submit the proof of ownership of adjoining land required by the Department's regulations, he loses his preference right not withstanding the fact that he was assured by the manager that the proof of title which he did submit was satisfactory. William H. Boyd, Clarance Virgil West, A-27440 (June 3, 1957). Since there was a clear failure to comply with a plain regulation of the Department and th rights of a third party are involved, there is no alternative to the rigid enforcement of the regulations. Cf McKay v. Wahlenmaier, 226 F. 2d 35 (1955). The fact that the appellants may have relied to their detriment on the information furnished by an employee of the Bureau does not alter the situation since reliance by a person on information furnished to him by an employee of the Bureau cannot operate to vest in such a person any right which is not authorized by law. Charles L. Day, A-26233 (August 31, 1951); Fred and Mildred M. Bohens et al., 63 I.D. 65 (1956)

Since the appellants failed to furnish evidence of ownership of contiguous lands within the 30-day period following the sale, their preference right is lost as to this particular sale. Mildred S. Ayres, A-27604 (August 26, 1958). On the other hand, the preference right claim of Mr. and Mrs. Loper meets all the Departmental requirements and they were properly declared purchasers of the land in question.

The decision of the Chief, Lands Adjudication Unit of May 7, 1959 is, accordingly, affirmed.

Paul A. and Blanche E. Cook are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. and Mrs. Cook, the adverse parties to be served are:

Bernard E. and Rose Roth Loper
5016 La Canada Blvd.
La Canada, California

For the Director:

Enclosures

DISTRIBUTION:

Patricia J. Hofstetter, Attorney at Law (Certified Mail)
Paul A. and Blanche E. Cook (Regular Mail)
Bernard E. and Rose Roth Loper (Regular Mail)
Lands Staff Officer
Appeals List No. 1
LLM

63957-59

In reply refer to:

Sacramento 046964
047476
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 7, 1960

DECISION

Mario R. Colla : Public Sale Applications

Manager's Decision Reversed
Case Remanded

Mr. Mario R. Colla has appealed from a decision of the Manager rejecting his above-identified public sale applications, for the reason that the land applied for has been classified as being more suitable for retention in Federal ownership for watershed, wildlife, and public recreation, purposes, than it is for disposition by public sale.

The records show that the lands are desirably located for the management of a large local deer herd, which inhabits the area. The California Department of Fish and Game through the United States Fish and Wildlife Service has made application to withdraw part of the lands in question for wildlife purposes. Notice of the proposed withdrawal has been published in the Federal Register of May 2, 1957 at pages 3129, 3130.

The regulations of the Department, 43 CFR, 1958 Supp., 295.9 *et seq.*, provide in part that an application filed by a State or Federal agency for the withdrawal or reservation of lands under Executive Order 10355 of May 26, 1952 (17 F.R. 4831), when noted on the tract book of the land office, shall temporarily segregate the lands embraced therein from settlement, location, sale, selection, entry, lease, and other forms of disposition under the public land laws, including the mining and mineral leasing laws, to the extent that the withdrawal or reservation applied for, if effected, would prevent such forms of disposition. The cited regulations also provide that action on all prior applications whose allowance would be discretionary and on all subsequent applications will be suspended until final action on the withdrawal application has been taken.

In the circumstances, since final action on the proposed conflicting withdrawal has not been taken in this case, action on the public sale applications must be suspended, until such final action has been taken. *Arnold B. Runge*, A-28067 (September 19, 1959).

The decision rejecting the appellant's public sale applications is therefore reversed, and the records remanded to the Manager through the Bureau's State Supervisor at Sacramento, California to be held suspended until final action has been taken on the proposed withdrawal filed by the California Department of Fish and Game. Appropriate action may then be taken relative to the public sale application.

For the Director:
John B [illegible]

DISTRIBUTION:
Mr. Mario R. Colla (Regular Mail)
Lands Staff Officer
Appeals List No. 1
RBO

Lo

DOCKET FILES

PUBLIC SALE * 2 Application

PUBLIC LANDS * 7 Withdrawals, Proposed

An application filed for lands which are embraced in a proposed withdrawal will not be rejected but will be suspended until final action has been taken on the proposed withdrawal.

Mario R. Colla Sacramento 046964, 047476 (January 7, 1960)

DOCKET FILES

DOCKET FILES

PUBLIC SALE * 2 Application

Where subsequent to the taking of an appeal from a decision relating to classification of land, the Acting State Supervisor requests the record be remanded for reconsideration of the land classification in light of additional information which has been assembled pertaining to the proper classification of the land, the decision appealed from may be vacated and the case remanded for a reconsideration of the classification of the land.

Stanley L. Smith, Los Angeles 089056 (January 20, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Los Angeles 089056
5.04g

January 20, 1960

DECISION

Stanley L. Smith	:	Public Sale Application

Case Remanded

Mr. Stanley L. Smith has appealed from a decision rejecting his public sale application for the stated reason that the land is needed for access to the balance of the public land in the area and that sale would, therefore, complicate the administration of the remaining public lands in the area.

Subsequent to the filing of the appeal, the Acting State Supervisor for this Bureau in California requested that the case be remanded for a reconsideration of the land classification in light of additional information which has been assembled pertaining to the proper classification of the lands. Therefore, the decision appealed from is vacated and the case is being remanded to the Manager, through the Bureau's Assistant State Supervisor at Los Angeles, for a reconsideration of the classification of the land.

For the Director:

DISTRIBUTION:

Mr. Harry M. Conron, Attorney at Law (Regular Mail)
Mr. Stanley L. Smith (Regular Mail)
Lands Staff Officer
Appeals List No. 1
LLM

DOCKET FILES

PUBLIC SALE * 6 Award of Lands

RULES OF PRACTICE * 10 Standing to Appeal

Competing preference right claimants to land offered at public sale have no right to appeal from a decision merely allowing them 30 days within which to seek an agreement among themselves for the division of the lands sought.

Ernest Laurence Pavese, Sacramento 055145 (February 2, 1960)

In reply refer to:

Sacramento 055145
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 2, 1960

DECISION

Ernest Laurence Pavese : Public Sale

Decision of Manager Partly Vacated
Case Remanded

Ernest Laurence Pavese has appealed from the Manager's decision, dated July 13, 1959, which (pursuant to 43 CFR, 1958 Supp., 250.11(b)(3)) allowed Mr. Pavese, James K. Stonier and Larry Arnerich, the three preference right claimants to purchase lands sold at public sale, 30 days from receipt of the decision within which to attempt to agree among themselves upon a division of the lands by subdivisions. The decision allowed each of the preference right claimants the right of appeal from the decision to the Director.

The Manager's decision properly complied with the cited regulation by allowing the parties 30 days within which to seek a plan to divide the land in a manner satisfactory to the competing preference right claimants. However, no one is adversely affected by such a decision and so no one has the right of appeal. 43 CFR, 1958 Supp., 221.1. Such a decision is not final, but merely an interlocutory ruling from which no appeal lies. Cf. Morris Killem et al., Anchorage 020699 (December 15, 1958).

Accordingly, that part of the Manager's decision allowing the parties the right of appeal is vacated, and the case is remanded to the Manager, through the Bureau's State Supervisor, at Sacramento, California, for further appropriate processing of the case. The parties have advised the Bureau that no agreement as to the division of the lands can be reached by them, and the lands will be awarded in accordance with the provisions of 43 CFR, 1958 Supp., 250.11(b)(3).

Earl J. Thomas
Acting Director

DISTRIBUTION:

Mr. Ernest Laurence Pavese (Regular Mail)
Mr. James K. Stonier (Regular Mail)
Mr. Larry Arnerich (Regular Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

appeal to Sec
affirmed A 28459 L O(Sec)
11-15-60

DOCKET FILES

PUBLIC SALE * Application

Where the Department has held that a sale of land conducted pursuant to a public sale application is correct and a purchaser has been declared, it is proper to reject a public sale application filed for the same land after the date of the sale.

Carl G. Allen, Los Angeles 0148355 (February 23, 1960) filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

In the event an appeal is taken by Mr. Allen, the adverse party to be served is:

Mrs. Rhoda R. Adamson
1801 So. LaCienega Blvd.
Los Angeles 35, California

For the Director:

Enclosure

DISTRIBUTION:

Mr. Carl G. Allen (Certified Mail)
Mrs. Rhoda R. Adamson (Regular Mail)
Lands Staff Officer
Appeals List No. 1
LLM

DOCKET FILES

PUBLIC SALE * 5 Preference Right

A certificate of ownership of fee title in adjoining land as of a date prior to the sale is not acceptable proof to establish a valid preference right claim. Proof of ownership in fee of adjoining lands filed after the expiration of the preference right period is also ineffective.

Carlos D. Huff et al., Los Angeles 0164197 (February 29, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0164197
5.04g

February 29, 1960

Certified Mail
Return Receipt Requested

DECISION

Carlos D. & Edna H. Huff	:	Public Sale

Decision Affirmed

Carlos D. and Edna H. Huff have appealed from a decision, dated October 20, 1959, rejecting their preference right claim and declaring as purchaser Lee H. Collins.

Pursuant to the public sale application of Lee H. Collins, the lands were offered for sale on September 16, 1959. On that day a decision was rendered declaring Mr. Collins to be the high bidder for the lands. The decision also recited that in accordance with the regulation, 43 CFR, 1954 ed., 250.11(b), that the owners of contiguous land have a preference right for a period of 30 days thereafter to purchase the land at the highest price bid, and that, "Failure to submit to the Land Office satisfactory proof of land ownership during the 30-day period, will cause the preference right to be lost."

The appellants seeking to perfect as a preference right claim for the land, filed a certificate showing that they were owners of the adjoining land as of August 17, 1959, 30 days prior to the date of sale.

The appellants assert that the date, August 17, 1959, was mistakenly and inadvertently inserted in the certificate by the Security Title Insurance Company and for corroboration they furnish an affidavit executed by an official of the company acknowledging that the mistake was that of the company and not of the appellants. Also included was a policy of title insurance, dated November 18, 1959, which states:

> "The title to the land next described is at the date hereof vested in Carlos D. Huff and Edna H. Huff, husband and wife, as joint tenants."

The policy of title insurance shows title as of some two months after the date of the sale.

Proof of ownership of adjoining land as of a time before the date of a sale is not proof of ownership of contiguous lands at or within 30 days after the date of the sale. The certificate of ownership submitted by appellants, therefore, did not constitute a proper preference right showing. Frank H. and Norma Jo Camiletti, Albert R. Hitchens, Colorado 016713 (May 21, 1959).

Consideration has been given to the appellants' assertion that the mistake should not prejudice their rights. However, a preference right claimant who does not timely file proper proof may not be afforded an opportunity at a later date to submit proper evidence of ownership and his preference right is lost as to that particular sale. Elizabeth A. Tallon, Oscar Jones, A-27910 (May 18, 1959).

Since there was no preference right claimant for the sale, the high bidder was properly awarded the right to purchase the land.

Accordingly, the decision below is hereby affirmed.

Carlos D. and Edna H. Huff are allowed the right of appeal to the Secretary of the Interior in accordance with regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Carlos D. and Edna H. Huff, then the adverse party to be served is:

Mr. Lee H. Collins
107 South Maple Street
Montebello, California

For the Director:

Enclosure

DISTRIBUTION:

Carlos D. and Edna H. Huff (Regular Mail)
Mr. Clinton F. Jones, Attorney at Law (Certified Mail)
Mr. Lee H. Collins (Regular Mail)
Lands Staff Officer
Appeals List No. 1
JJS

appeal to Secy
dismissed A-28469
7-25-60

5-7

DOCKET FILES

PUBLIC SALES * 6 Award of Lands

In the absence of convincing evidence that the award of lands was unfair, or based upon material error, the award made among several preference right claimants will not be disturbed. Thomas J. Lanigan, Sacramento 053187 (March 7, 1960)

In reply refer to:
Sacramento 053187
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 7, 1960

Certified Mail
Return Receipt Requested

DECISION

Thomas J. Lanigan : Public Sale

Decision Affirmed

Mr. Thomas J. Lanigan has appealed from a decision of the Manager dated April 30, 1959, which awarded a certain portion of a tract of public land sold at public auction to another preference right claimant, in the above-identified public sale case.

The record shows that a tract of public land described as the SE¼SW¼, SE¼, sec. 23, and the NW¼SW¼, S½NW¼, NE¼NW¼, sec. 24, T 22 S., R. 11 E., M.D.M., California was offered for sale at public auction on October 22, 1958, pursuant to the application, Sacramento 053187, filed by Mr. Tony E. and Katheryn L. Carvalho. These parties were declared the high bidders. After the sale was held and within the time required, the appellant Thomas J. Lanigan, Tony E. and Katheryn L. Carvalho, and Henry R. and William B. Alexander, all submitted acceptable evidence as to the ownership of adjoining land. Henry R. and William B. Alexander, and the appellant remitted a sufficient amount of money to meet the high bid of Tony E. and Katheryn L. Carvalho submitted at the sale. Thereafter, and pursuant to a decision of the Manager dated November 28, 1958, evidence of agreement as to the division of the land was submitted by Tony E. and Katheryn L. Carvalho and Henry R. and William B. Alexander as to the division of the land between the preference right claimants, however, the agreement was not entered into by the appellant. These two claimants agreed that the land should be divided with the SE¼SW¼, N½SE¼, SW¼SE¼, Sec. 23, being awarded to the Carvalhos, the SE¼SE¼, sec. 23, and the NW¼SW¼, SE¼NW¼, sec. 24, being awarded to the Alexanders, and the SW¼NW¼, NE¼NW¼, sec. 24, being awarded to the appellant, Thomas J. Lanigan. The appellant by letter dated December 16, 1958, requested that he be awarded the N½SE¼, sec. 23, and the SW¼NW¼, NE¼NW¼, sec. 24, and in which he stated that he agrees with the selection of the land made by the Alexanders, however, he did not agree with the division of the land as proposed by the Carvalhos and the Alexanders.

Since there was no agreement reached by all of the preference right claimants, the Manager in the decision of April 30, 1959, declared the Carvalhos the purchasers of the SE$\frac{1}{4}$SW$\frac{1}{4}$, N$\frac{1}{2}$SE$\frac{1}{4}$, SW$\frac{1}{4}$SE$\frac{1}{4}$, sec. 23, the Alexanders the purchasers of the SE$\frac{1}{4}$SE$\frac{1}{4}$, sec. 23, and the NW$\frac{1}{4}$SW$\frac{1}{4}$, SE$\frac{1}{4}$NW$\frac{1}{4}$, sec. 24, and the appellant, Thomas J. Lanigan, the purchaser of the SW$\frac{1}{4}$NW$\frac{1}{4}$, NE$\frac{1}{4}$NW$\frac{1}{4}$, sec. 24, all in T. 22 S., R. 11 E., M.D.M.

The appellant does not dispute the division of the land as made by the Manager, except as to the award of the N$\frac{1}{2}$SE$\frac{1}{4}$, sec. 23 to the Carvalhos. The appellant contends in substance that he has used this land under grazing leases since 1956, and has grazed it since 1921.* He also contends in substance that from a topographic standpoint he has better access to the land as the north portion slopes toward his owned land, whereas any livestock being grazed by the Carvalhos would have to cross two steep ridges to get to water, while his livestock would only have to drift down the canyon from his private land to water.

The appellees, Tony E. and Katheryn L. Carvalhos in answer to the statements made by the appellant in his appeal, assert that it was impossible for him to have grazed all of the N$\frac{1}{2}$SE$\frac{1}{4}$, sec. 23, since 1921, since part of the land in this subdivision had been fenced in with the land owned by them, by former owners. They also assert that no more than 20 percent of the land slopes toward the land owned by the appellant, and that they have better access to water in a canyon on the land. The statements made by the appellees are supported by a statement submitted by Henry R. and William B. Alexander.

The pertinent regulation, 43 CFR 1957 Supp. 250.11(b)(3), provides that in the event that two or more preference-right claimants cannot agree as to a division of the land offered for sale, it will be divided equitably, taking into consideration such factors as "(i) the equalizing of the number of acres which each claimant will be permitted to purchase, (ii) desirable land use, based on topography, land pattern, location of water, and similar factors, and (iii) legitimate historical use * * * If equitable considerations dictate, all of the subdivisions may be awarded to one of the claimants."

The appellant has not submitted any substantive and positive evidence that the Manager erred in his award of the land to the preference right claimants in this case. The award of public lands will not be disturbed in the absence of convincing evidence that the award was unfair or based upon material error, and where it appears that the award was properly made upon the basis of topography of the lands and desirable land pattern. Cf. Henry W. and Beatrice H. Luhmann, A-27491 (Supp.) (June 15, 1959); Ormand L. and Myrtle A. Hurt, A-27544 (February 14, 1958).

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* The records indicate that grazing lease, Sacramento 050739, was issued to appellant for the land in question along with part of the other land for a period of 10 years effective September 20, 1956.

Accordingly, the decision appealed from is affirmed.

Mr. Thomas J. Lanigan is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken the adverse parties to be served are:

Mr. and Mrs. Tony E. Carvalho
P. O. Box 211
San Ardo, California

Messrs. Henry R. and William B. Alexander
P. O. Box 26
Bradley, California

For the Director:

Enclosure

DISTRIBUTION:
Mr. Thomas J. Lanigan (Certified Mail)
Mr. and Mrs. Tony E. Carvalho (Regular Mail)
Messrs. Henry R. and William B. Alexander
Lands Staff Officer
Appeals List No. 1
RBO

LO (Sac)

DOCKET FILES

PUBLIC SALE * 2 Application

STATE GRANTS AND SELECTIONS * 1 Generally

State selections should, as a matter of principle, be honored over competing public sale applications, regardless of the use which the State may make of the selected land.

Charles Augustus Sweetser, Los Angeles 0108784 (March 8, 1960)

In reply refer to:

Los Angeles 0108784
5.04g

March 8, 1960

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

Charles Augustus Sweetser : Public Sale

Decision Affirmed

Charles Augustus Sweetser has appealed from the decision of the Chief, Land Adjudication Unit, Los Angeles Land Office, dated July 31, 1959, which rejected in part his public sale application in favor of a State Indemnity Selection.

The appellant alleges that the locality will have greater value and the land will have greater tax revenue if privately owned.

The record shows that the appellant filed his application on December 17, 1953 and that the State of California filed its application on June 23, 1954.

The Department has held that applications made by the States in the exercise of their selection rights should, as a matter of principle, be honored over competing private applications for the same lands, even though the latter is prior in time and may more nearly fit the characteristics of the lands, George E. Fahey, A-27606 (November 4, 1958). The reason for this policy is that Congress has obligated the United States to fulfill certain statutory land grants to the States; and, assuming procedural requirements will be met, the general preferment of State selections is entirely appropriate to the dignity and importance of that obligation regardless of the use which the State may make of the selected land, Isobel Gunnerson et al., State of Nevada, A-26952 (February 11, 1955).

In view of the foregoing, the allegations of the appellant are not sufficiently meritorious to warrant a decision in his favor.

Accordingly, the appellant's application appears to have been properly rejected in part, and the decision of the Chief, Land Adjudication Unit is affirmed.

Charles Augustus Sweetser is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

In the event that an appeal is taken, the adverse party to be served with notice thereof is:

State of California
State Lands Division
1403 - 12th Street
Sacramento 14, California

For the Director:

Enclosure

DISTRIBUTION:
Charles Augustus Sweetser (Certified Mail)
State of California (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MHS

LO

DOCKET FILES

PUBLIC SALE * 6 Award of Lands

When two preference-right claimants seek to acquire an isolated tract consisting of only one subdivision, it will not be awarded to the applicant where equitable considerations based on legitimate historical use, desirable land pattern, location of fences, and relative need require that it be awarded to the other preference-right claimant.

Tony G. Dotta, Sacramento 053104 (March 15, 1960)

LO

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Sacramento 053104
5.04g

March 15, 1960

Certified Mail
Return Receipt Requested

DECISION

Tony G. Dotta : Public Sale

Decision Affirmed

Mr. Tony G. Dotta has appealed from a decision of the Manager, Sacramento Land Office, dated September 3, 1959, rejecting his preference right claim to purchase the 27.04-acre tract of land offered at public sale on August 18, 1958, and awarding the land to Messrs. Andrew and John Digitale, pursuant to their preference right claim to purchase the offered land (43 CFR 250.11(b)(3)). The sale had been initiated under the application of Mr. Dotta, and upon a consideration of both preference right claims and information contained in reports of field examination made by Bureau personnel, the Manager held an award of the lands to the Messrs. Digitale was proper, based on factors of land pattern, proven prior use, and location of stock fences.

The appellant contends in substance that he has better access to the offered land, not only by virtue of the topography of the land but by means of his road to the land, which is the only road to the land. He asserts that the statements made by the appellees as to the use and accessibility of the land to their own land and to water are misleading, since they have no right-of-way insuring access to the offered land, and further that the award of the land as made in the decision appealed from would appear to be based wholly upon the fact that the land was under grazing lease to members of the Digitale family for a long time rather than upon the basis of adjoining land ownership or accessibility from adjoining Digitale lands.

In an answer to the appeal, the appellees state that the award in question was not based entirely on the fact that they or their predecessors in interest had a grazing lease on the land for a number of years, but took into consideration such factors as land pattern, proven prior use, location of stock fences, insurance of access to stock water, and access to their owned land in Mineral Survey 3789A.

A careful review has been made of the record. It is disclosed that a supplemental field examination was made of the land by a Bureau employee after the sale of the land was held, and prior to the time the land was awarded to the Digitales. The topography of the land in question is shown to be somewhat rolling, however, no steep gorge along Black Gulch of such character as to prevent movement of livestock as contended by the appellant is evident. In this connection it may be stated that it is not a requirement that employees making field examinations must contact applicants for the lands in the gathering of information as to the accessibility of the lands or any other pertinent use factors involved. It is established by the record that the Digitales have held a grazing lease on the offered land since 1942 and have used the land in question for a number of years, and apparently have had access to any portion of it from other lands owned by them. It is shown also that the offered land is fenced in with other land of the appellees, and has been for a number of years, and that such fences were constructed by them or their predecessors in interest. It is further shown that Black Gulch which traverses Lot 3 furnishes seasonal water for the appellees' livestock. The records show that the appellees own approximately 2 acres of land in Mineral Survey 3789A, which land adjoins the offered land on three sides and which would otherwise be completely isolated from other land owned by the appellees. In summary, considerations of the legitimate historical use, location of fences, and desirable land pattern, as well as the need for the land by the Digitales support the award which was made by the Manager. Cf. Albert Hitchens, A-27135 (August 1, 1955). The appellant has failed to present convincing evidence that the award was unfair, or based on material error. It appears to be proper, and it will not be disturbed. Ervin Carl et al., 66 I.D. 345 (1959).

Accordingly, the decision appealed from is affirmed.

Mr. Tony G. Dotta is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken the adverse parties to be served are:

Messrs. Andrew and John Digitale
P. O. Box 32
Jackson, California

For the Director:

A. H.

Enclosure

DISTRIBUTION:

Gilmore and Gilmore, Attorneys at Law (Certified Mail)
Mr. Tony G. Dotta (Regular Mail)
Messrs. Andrew and John Digitale (Regular Mail)
Lands Staff Officer
Appeals List No. 1
RBO

appeal to Sec LO(Sac)

DOCKET FILES

PUBLIC SALE * 2 Applications

SMALL TRACTS * 3 Classification

CLASSIFICATION * 1 Generally

Where the record shows that a subdivision was properly classified for disposition under the Small Tract Act, a public sale application for the same land should be rejected.

In the absence of error appearing on the face of the record, the appellant must show by positive and substantial evidence that the classification is erroneous.

Robert James Thompson, Los Angeles 0157317 (April 22, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0157317
5.04g

April 22, 1960

Certified Mail
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DECISION

Robert James Thompson	:	Public Sale

Decision of Chief, Land Adjudication Unit, Affirmed

Robert James Thompson has appealed from the decision dated March 1, 1960, of the Chief, Land Adjudication Unit, rejecting his public sale application because the subdivision sought to be sold has been classified as more suitable for small tract development.

A field examination report made by Bureau personnel shows that the 40 acres involved is flat desert land situated four miles from Barstow, California, adjacent to a main highway. The level topography and excellent access possibilities with highway frontage has been found to make this subdivision well suited for homesites. Moreover, being close to the City of Barstow, additional homes in the area would not overtax the city resources.

On appeal, the appellant submits some general statements from the local flood control district showing that "the area" is subject to infrequent flooding by reason of overflowing from other areas and desert storms. The record does not show that this flood condition is sufficient to preclude homesite development on the land in issue, nor that it might not be controlled. In view of these facts, the subdivision appears to have been properly classified for disposition for homesites under the Small Tract Act, as amended (43 U.S.C., 1958 ed., 682a et seq.), and, thus, the public sale application for the same land should be rejected. Paul B. Butler et al., A-27634 (August 26, 1958).

The appellant has made no persuasive showing that the adverse classification is in error. The Department has held that in the absence of error appearing on the face of the record, the appellant must show by positive and substantial evidence that the classification is erroneous. Lewis E. King et al., A-27772 (November 21, 1958).

Accordingly, the decision of the Chief, Land Adjudication Unit, is affirmed.

Robert James Thompson is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, the amount of the filing fee will be $5.00. In taking an appeal, there must be strict compliance with the regulations.

For the Director:

A. H. Dunn

Enclosure

DISTRIBUTION:

Mr. Robert James Thompson (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

7;9;8-60

appeal to Sec
Remanded A-28566 3-27-62

DOCKET FILES

PUBLIC SALE * I Generally

PUBLIC LANDS * 10 Appraisal

RULES OF PRACTICE * 9 Service on Adverse Party

A public sale will not be consummated where the time span is appreciable between classification and appraisal of the lands and the date when final award of the lands could be made, as the appraised values may not reflect the present fair market value of the lands.

The dismissal of an appeal for failure to serve the adverse parties named in the decision is proper.

Fred E. Galleppi et al., Sacramento 050525 (June 2, 1960)

In reply refer to:

Sacramento 050525
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 2, 1960

Certified Mail
Return Receipt Requested

DECISION

Fred E. and Leo B. Galeppi : Public Sale
Saralegui Land & Livestock Company

Appeal Dismissed in Part;
Public Sale Vacated; Hearing Denied

Fred E. and Leo B. Galeppi, and the Saralegui Land & Livestock Company, have each appealed from the Manger's decision, dated March 11, 1957, awarding certain lands sold at public sale among the appellants and Lee Alfred and Marie E. Paoli, the appellees.

The record does not show any proof of service of notice of the appeal of the Saralegüi Land & Livestock Company on the adverse parties named in the decision appealed from, as required by the rules of practice, and the appellees assert they did not receive a copy of the notice. Accordingly, the appeal of the Saralegui Land & Livestock Company is summarily dismissed. 43 CFR, 1958 Supp., 221.4 and 221.98(b); Dinver Pearson, A-27800 (January 5, 1959).

The lands were offered for public sale on December 3, 1956, having been appraised by Bureau personnel on June 7, 1956. The record does not show that any review of the land appraisals has been made by the Bureau since that time. In view thereof and pursuant to the Department's recently announced statement of policy concerning public sales, which in pertinent part precludes the consummation of a sale of public land where the time span is appreciable between classification and appraisal of the lands and the date when final award of the lands could be made, it is considered to be in the public interest to vacate the sale and to proceed anew as the appraised values may not reflect the present fair market value of the lands. The announced policy and this action afford a safeguard against speculation in disposition of the public lands at public sale. If the lands are again offered for sale, they will be ordered into the market upon motion of the Bureau.

The issues on appeal are therefore moot. Also, the requested hearing is unnecessary in the circumstances and it is denied.

Fred E. and Leo B. Galleppi, the Saralegüi Land & Livestock Company, and Lee Alfred and Marie E. Paoli are each allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221 as amended. See enclosed Form 4-1365. If an appeal is taken, the amount of the filing fee will be $5.00, for each party appealing. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by any of the three parties named herein, then the other two parties must be served as adverse parties. The parties addresses are as follows:

Messrs. Fred E. and Leo B. Galeppi

Doyle, California

The Saralegui Land & Livestock Company
Post Office Box 1427
Reno, Nevada

Mr. Lee Alfred and Mrs. Marie E. Paoli
No. 632 Thirty Fourth Street
Sacramento, California

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Messrs. Fred E. and Leo B. Galleppi (Certified Mail)
The Saralegui Land & Livestock Company (Certified Mail)
Mr. Lee Alfred and Mrs. Marie E. Paoli (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

75105-60

DOCKET FILES

PUBLIC SALE * 2 Applications
* 3 Classification
* 8 Rough or Mountainous

An application for the public sale of land which is not isolated and not mountainous or too rough for cultivation is properly rejected.

The fact that lands have been classified as unsuitable for agricultural purposes is not to be construed as a determination that they are mountainous or too rough for cultivation under the public sale law.

Eugene L. Okenfus, Los Angeles 0147966 (June 8, 1960)

RECEIVED
JUN 28 1960
DEPT. OF THE INTERIOR
BUR. OF LAND MANAGEMENT
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SACRAMENTO
CALIF.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Los Angeles 0147966
5.04g

June 8, 1960

Certified Mail
Return Receipt Requested

DECISION

Eugene L. Okenfus : Public Sale

Decision Affirmed

Mr. Eugene L. Okenfus has appealed from the decision of the Chief, Lands Adjudication Unit, dated January 12, 1960, which rejected his public sale application for the reason that the lands applied for are not isolated and are not mountainous or too rough for cultivation within the meaning of the Public Sale Law.

The subject lands are adjoined by other public lands and therefore are not subject to public sale as isolated tracts. Mr. Okenfus applied for the lands under the following provision of the Public Sale Law:

> "* * * any legal subdivisions of the public land, not exceeding seven hundred and sixty acres, *the greater part of which is mountainous or too rough for cultivation*, may, in the discretion of the said Secretary, be ordered into the market and sold pursuant to this section upon the application of any person who owns land or holds a valid entry of lands adjoining such tract, regardless of the fact that such tract may not be isolated or disconnected within the meaning of this section. * * *" 43 U.S.C. sec. 1171. /Emphasis added./

It is appellant's contention that the lands are mountainous or too rough for cultivation. In support of his contention, he has submitted four photographs. Generally, the photographs show flat strips of land with rock piles and/or hills rising from the level land, and one shows a ravine. Although appellant has made notations on the backs of the photographs, these are not sufficient to indicate that all, or part, of the land pictured is that applied for. However, the classification report of the Bureau field examiner includes photographs clearly marked showing the subject land and also a diagram illustrating at what spot and from what angle the picture was taken. It appears from these photographs that most of the land applied for is level with some gradual slope to the base of mountains which are not part of the subject land.

Appellant also contends that a prior classification of the land as unsuitable for agricultural entry under the public land laws is inconsistent with the determination now that the lands are not mountainous or too rough for cultivation under the public sale law. Contrary to his contention, the two determinations cannot be equated. As applicants for agricultural entry (homestead and desert land entries) must meet definite requirements as to residence, and cultivation of a certain portion of the land for specified times, as well as several other requirements before the lands can be patented to them, additional factors are considered in determining whether the lands may be classified for agricultural purposes, i.e., whether the lands have the potential to enable an applicant to fulfill such requirements, in order to prevent a possible futile expenditure of time, effort and money by him. For example, these lands and others in the area were classified as unsuitable for agricultural purposes because of the unsuitability of the soils, the uncertainty of water supplies, the ill effect of the wind, the short growing season and the adverse cost factor involved, and not because the lands are mountainous or too rough for cultivation. Therefore, there is no valid basis for concluding that the lands may be offered for public sale under the provision afore-quoted simply because they have been determined unsuitable for agricultural entry. See John D. and Pauline H. Moore, Los Angeles 0142940 (September 25, 1958).

Nevertheless, even if the lands could be considered as coming within the statutory requirement of being mountainous or too rough for cultivation, the disposal of the lands within the discretion of the Secretary would be based upon the best public interest. See Mike Erramouspe et al., A-27179 (September 27, 1955). In this connection there are indications in the record that the lands may be subject to consideration for future disposition under the small tract law.

However, inasmuch as appellant has not submitted evidence which controverts the finding that the greater part of the land is not mountainous or too rough for cultivation, the statutory requirement has not been met and the rejection of the application was proper on this ground. Therefore, the decision is affirmed.

Eugene L. Okenfus is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

Distribution on page 3

DISTRIBUTION:

Mr. Eugene Ludwig Okenfus (Certified Mail)
Hon. Sidney R. Yates, House of Representatives
Lands Staff Officer
Appeals List No. 1
JB

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Sacramento 060211
5.04g

June 17, 1960

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

L. C. Dauth :
Max O. Oeck Jr. :
Casper W. Mandella : Public Sale
William S. Smith :
Peter R. Andre :

Decision Affirmed

The above named applicants, through their attorney, have appealed from the decision of the Manager, Sacramento Land Office, dated March 24, 1960, rejecting their public sale application, filed on November 16, 1959, on the ground that the 200 acres of land sought has been classified as being chiefly valuable for disposition under the Recreation and Public Purposes Act.

The appellants allege that the tract is a rough and mountainous tract, covered with sagebrush with some browse for cattle; that it is not connected with the Nacimiento Reservoir and is therefore not chiefly valuable for recreation purposes.

The record shows that the people of Salinas River Valley expended $7,000,000.00 for a dam for water conservation, flood control and water recreation on the Nacimiento River with a capacity of 350,000 acre feet and a permanent minimum pool of 10,000 acre feet. Persons using the reservoir, primarily for water skiing come from as far as 150 miles away. Plans for the proposed development of the recreation facilities on the north side of the lake, include the improvement of the Bee Rock Road to highway standards, the installation of boat launching facilities, concessions, and picnic grounds for public use. The subject land is approximately ½ mile north of the reservoir and the road through the land continues until it is covered by the waters of the reservoir.

The question in issue is one of proper classification. The appellants have submitted no positive and substantial evidence that the classification is erroneous. Public sale applications are properly rejected where the land sought is considered to be chiefly valuable for recreational purposes and disposal under the Recreation and Public Purposes Act is in the public interest. *Nelson A. Gerttula*, 64 I.D.

64 I.D. 225 (1957). Moreover, it is the express policy of the Department to make public lands, valuable for public recreation purposes, available for use by the general public. See Policy Statement, approved April 16, 1958, by the Secretary of the Interior. Cf. Rhineland Paper Company, BLM 039764 (Wis.)(November 3, 1958).

The appellants' statement of reasons for appeal provides no basis for changing the classification of the land. The appellants' application was properly rejected as to the land in issue. Cf. Lafayette M. Hughes, A-27213 (December 28, 1955).

Accordingly, the decision of the Manager is affirmed.

The above named appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Dun

Enclosure

DISTRIBUTION:

Peter R. Andre, Attorney for Appellants (Certified Mail)
Each appellant (Regular Mail)
Land Staff Officer
Appeals List No. 1
MHS

DOCKET FILES

PUBLIC SALE * 2 Application
* 3 Classification

RECREATION ACT * 1 Generally

A public sale application for lands which are classified as being chiefly valuable for recreation purposes is properly rejected.

L. C. Dauth et al., Sacramento 060211 (June 17, 1960)

appeal to Sec

DOCKET FILES

PUBLIC SALE * 1 Generally

PUBLIC LANDS * 7 Withdrawals

An application for public sale (43 U.S.C., 1958 ed., sec. 1171) of land withdrawn from all forms of appropriation or disposal under the public land laws and reserved for the use of the United States Air Force Department is properly rejected and cannot be suspended to await the possible restoration of the land.

Frank J. Schultz, Los Angeles 0164457 (June 27, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0164457
5.04g

June 27, 1960

Certified Mail
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DECISION

Frank J. Schultz : Public Sale

Decision Affirmed

Mr. Frank J. Schultz appealed from a decision of the Manager, dated March 3, 1960, which rejected his application filed June 16, 1959, under the public sale law, as amended (43 U.S.C., 1958 ed., sec. 1171), for the S½NW¼ sec. 34, T. 11 N., R. 9 W., S.B.M., California, for the reason that the land is withdrawn from all forms of appropriation or disposal under the public land laws and reserved for the use of the United States Air Force Department. [1]

The appellant states that the lands have been declared excess by the United States Air Force Department and are being returned to the Department of the Interior.

The status of the lands as reported by the Manager is verified by the record. The withdrawal has not been revoked. The Department has held that lands withdrawn from all forms of appropriation or disposal cannot be disposed of at public sale until they are properly restored from such withdrawal. Cf. Keith Sprecking et al., A-26190 (July 21, 1951). Moreover, it has been consistently held by the Department that where public land has been withdrawn from all forms of appropriation or disposal under the public land laws, an application therefor cannot be suspended to await the possible restoration of the land, but must be rejected. Alma Everett Morris, Jr., A-27235 (December 12, 1955); Charles Hover Stevens, A-27301 (May 4, 1956).

Accordingly, it was proper to reject the appellant's application, and the Manager's decision is affirmed.

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[1] Withdrawn by Public Land Order 646 (15 F.R. 2939, May 17, 1950).

Mr. Schultz is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H.

Enclosure

DISTRIBUTION:

Mr. Frank J. Schultz (Certified Mail)
Lands Staff Officer
Appeals List No. 1
WJ

75105-60

PUBLIC SALES * 6 Award of Lands

An award of land offered at a public sale between two preference-right claimants will not be disturbed where the appellant fails to submit convincing evidence that the award was unfair or based on material error. *Leona Green*, Sacramento 051536 (July 7, 1960)

h0

In reply refer to:

Sacramento 051536
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 7, 1960

Certified Mail
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DECISION

Leona Green : Public Sale

Decision Affirmed

Mrs. Leona Green has appealed from a decision of the Manager, dated August 17, 1959, which awarded her the W½NE¼NW¼, sec. 21, T. 9 N., R. 12 E., M.D.M., California, and which awarded to Mr. Elmo E. Phillips the E½NE¼NW¼, sec. 21, pursuant to their preference right claims to purchase, they having failed to agree among themselves upon a division of the lands, which had been offered for public sale under the above-identified public sale application. 43 CFR 1960 Supp. 250.11(b)(3).*

The appellant in her appeal, contends in substance that she should be allowed to purchase the S½ of the tract for the reason that she owns land adjoining on the south, west, and east, and by being allowed this portion of the tract, it would tend to block her own land to a better advantage. She also asserts that the S½ of the tract is adjacent to the meadow and pasture land owned by her, and would create an extension of such land.

In answer to the statement of reasons submitted by the appellant, Mr. Phillips asserts that he needs the E½NE¼NW¼ in order to have access to water in the Middle Fork of the Cosumnes River from his privately-owned adjoining land in Sec. 16. He also contends that the N½ of the subdivision has no grazing value and no water on it, while the S½ is traversed its full length east and west by the Middle Fork of the Cosumnes River, and contains all of the good grazing land in the tract. Mr. Phillips concludes that if the N½ of the tract were awarded to him he would receive land of no value, entirely lacking in water, and he would be paying the same price for this portion as the appellant would pay for the good land in the S½.

---

* There was only one legal subdivision offered for sale in the instant case, and generally the splitting of a legal subdivision will not be allowed. However, as in the instant case, where it is determined that because of the particular land-use factors involved, disposal of the land in terms of aliquot parts of legal subdivisions is warranted, the rule against splitting a legal subdivision will be waived. Cf. Charles O. Miller et al., A-27822 (March 4, 1959).

It appears that, taking into consideration such factors as desirable land use, location of water, topography, and the equalizing of land values as well as the equalizing of the number of acres which each claimant will be permitted to purchase, the division of the land as made by the Manager in his decision of August 17, 1959, in which he awarded the E½NE¼NW¼, Sec. 21 to Mr. Phillips and the W½NE¼NW¼, Sec. 21 to the appellant, Mrs. Green, is equitable to both parties in all respects. (43 CFR 1960 Supp. 250.11(b)(3)). The Department has consistently held that an award of land offered at a public sale between two preference-right claimants will not be disturbed in the absence of a clear showing that the award was unfair, or fails to consider a material fact, or is otherwise erroneous. *Guy B. and Wilda J. Seibert et al.*, A-27524 (December 12, 1957). No such showing has been made in this case.

Accordingly, the decision of the Manager is affirmed.

Mrs. Leona Green is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken the adverse party to be served is:

Mr. Elmo E. Phillips
P. O. Box 356
Millbrae, California

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Hughes, Maul & Fogerty, Attorneys for appellant (Certified Mail)
Mrs. Leona Green (Regular Mail)
Gilmore & Gilmore, Attorneys for appellee (Regular Mail)
Mr. Elmo E. Phillips (Regular Mail)
Appeals List No. 1
Lands Staff Officer
RBO

PUBLIC SALES * 2 Application

PUBLIC LAND * 7 Withdrawals

An application for public sale must be rejected when subject land has been withdrawn and included in a National Forest by proclamation order. Charles M. Otter, Sacramento 061432 (July 25, 1960)

In reply refer to:

Sacramento 061432
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 25, 1960

Certified Mail
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DECISION

Charles M. Otter	:	Public Sale Application

Decision Affirmed

Charles M. Otter has appealed from the decision of the Manager, Land Office, Sacramento, California, dated April 21, 1960 rejecting his public sale application for the $SW\frac{1}{4}SW\frac{1}{4}$, Sec. 12, T. 2 N., R. 15 E., M.D.M., California, for the reason that this land was withdrawn by proclamation dated October 14, 1929, is within the boundary of Stanislaus National Forest, and, therefore, is not subject to public sale.

Appellant contends that the above proclamation was revoked; that the subject land is nearly two miles outside of the main body of the National Forest; that it is too rocky for good timber growth and has no roads, but he makes no showing wherein he believes the decision appealed from is erroneous as required by Rules of Practice. Ruth A. McCarthy et al., L.A. 0151758 etc. (June 18, 1959)(approved June 24, 1959 by Assistant Secretary of the Interior, Roger Ernst).

The records in the Bureau disclose that the subject land was added to the Stanislaus National Forest by Presidential Proclamation dated October 14, 1927. We are not aware of any order revoking the President's Proclamation of October 14, 1927, nor has the appellant cited any revocation order.

The President may at any time withdraw any public land and reserve it for public purposes specified in the order of withdrawal and it remains in force until revoked by him or by an act of Congress (43 CFR 295.1(a)).

The mere filing of a public sale application gives the applicant no contractual right against the United States and no action taken creates any contractual, or other obligation of the United States (43 CFR 250.5). Therefore, it is proper to reject a public sale application for land withdrawn by Executive Order and reserved for certain purposes. Earl L. Livermore, A-27552 (February 7, 1958).

Accordingly, the decision is affirmed.

The appellant is allowed the right of appeal to the Secretary of the Interior in accordance with regulations in 43 CFR, Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Charles M. Otter (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RLE

76861-60

appeal to Secy
Remanded, A-28627
4-27-1962

DOCKET FILES

PUBLIC SALE * 2 Application
* 3 Classification

Where public land values change with such rapidity that the land cannot be appraised with confidence and accuracy it is proper to classify it as not suitable for public sale and reject a previously filed Public Sale application.

In exercising his discretionary authority the Secretary may properly weigh all factors bearing on the suitability of land for use or disposal including the effect on public interest.

R. A. Ellsworth, Los Angeles 0153853 (July 27, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Los Angeles 0153853
5.04g

July 27, 1960

Certified Mail
Return Receipt Requested

DECISION

R. A. Ellsworth : Public Sale Application

Decision Affirmed

R. A. Ellsworth has appealed from the decision of the Chief, Lands Adjudication Unit, Los Angeles Land Office, dated April 25, 1960 rejecting his public sale application in compliance with the Secretary's announced policy pertaining to public domain land sales dated February 23, 1960.

Regulations pertaining to the Secretary's authority to classify lands, 43 CFR 296.1(a), provide in pertinent part:

> "Section 7 of the act of June 28, 1934(48 Stat. 1272), as amended by the act of June 26, 1936(49 Stat. 1976; 43 U.S.C. 315f), authorizes the Secretary of the Interior in his discretion to examine and classify any lands withdrawn or reserved by Executive Order 6910 of November 26, 1934, or Executive Order 6964 of February 5, 1935, and amendments thereto* * * for any other use than the use provided for under said act.* * *."

Pursuant to the above authority the Secretary, on February 23, 1960, announced his anti-speculation policies and procedures dealing with public domain land, which, insofar as they apply to the instant case, read as follows:

> "In connection with the functions of the Bureau of Land Management under the authority of the Public Sales Act (Section 2455 R.S.) no land will be classified as suitable for sale at auction thereunder if:
>
> (a) Land values are so unstable or undetermined that the land cannot be appraised with confidence as to accuracy."

In exercising discretionary authority vested in him by Section 7 of the Taylor Grazing Act, the Secretary may properly consider and weigh all factors which have a bearing on the suitability of the land for use or disposal including the effect on the public interest, Nelson A. Gerttula, (64 I.D. 225), and without positive evidence to controvert a classification based on a field report the classification will not be disturbed. Nelson W. Hope, Washington 0835 (Sept. 5, 1957).

The record shows that the land involved is located in the Salton Sea Community where land values, due to speculation, have altered with considerable rapidity in the past few years and the fluctation in values is continuing; therefore, under the announced policy it was proper to classify subject land as not suitable for public sale.

Accordingly, the decision is affirmed.

R. A. Ellsworth is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

R. A. Ellsworth (Certified Mail)
Hon. D. S. Saund, House of Representatives
Lands Staff Officer
Appeals List No. 1
RLE

76861-60

DOCKET FILES

PUBLIC SALES * 1 Generally

* 3 Classification

A public sale of land will be vacated where it appears that the appraisal of the land was based on information which does not meet the Bureau's current standards for adequacy and reliability, and where the span of time between the classification of the land and consummation of the sale is such that the land values would probably vary appreciably. The land will be reexamined, reappraised, and offered for sale at public auction on the motion of the Bureau, where it is then disclosed that such disposal will be in the public interest and consistent with the Department's anti-speculation policies.

Keith and Helen Reid et al., Sacramento 056790 (July 29, 1960)

In reply refer to:
Sacramento 056790
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 29, 1960

Certified Mail
Return Receipt Requested

DECISION

Keith and Helen Reid :
Appellants : Public Sale
Louis G. and Ruth N. Dunn :
Appellees :

Decision Modified
Sale Vacated;
Case Remanded

Keith and Helen Reid have appealed from a decision of the Manager dated April 27, 1959, rejecting their preference right claim to purchase lands sold at a public auction because the adjoining land owned by them is of so small an area that it is considered insufficient to warrant an award of the land offered at the sale, or any part thereof, to them as preference right claimants.

The land sold comprises 360 acres located in secs. 18 and 19, T. 5 N., R. 14 E., M.D.M., California. The contiguous land owned by the appellants upon which they base their preference right claim comprises a small tract of land containing 0.0367 acres, which adjoins the land sold in sec. 18 for a distance of approximately 56 feet. The land sold was awarded to Louis G. and Ruth N. Dunn in the decision appealed from, on the basis of their preference right claim establishing their ownership of adjoining land, which extends along the entire east side of the land sold, no agreement as to the division of the land sold having been reached by the parties within the time allowed therefor. (43 CFR 250.11(b)(3)).

The appellants contend in substance that they were willing to agree to a division of the land sold but were unable to contact the Dunns; that the size of the adjoining tract of land upon which a preference right claim is based is not a factor to be considered in making an award of land, and that the small tract of contiguous land referred to in their preference right claim also adjoins approximately 1160 acres of other land owned by them; that they have as much need for the land as do the Dunns, and from a topographical standpoint the land is as accessible and useful to them as it is to the Dunns; and that an award of part of the land as suggested in the Manager's decision would not form a wedge between two privately-owned areas so as to cause expensive fencing for management purposes by the adjoining property owners, since the adjoining lands are already fenced. The appellants further assert that the Land Office received the Dunns' bid for the land from a person not authorized to act for them as agent, and that the Dunns have not paid them directly the costs of publication of the notice of sale, as specified in the regulations, 43 CFR 250.12. The appellants urge that the reimbursement should be made to them personally and not indirectly through the mails.

Upon review of the record it appears that the appellants' preference right claim to purchase the land was not in fact a valid preference right claim and that it should have been rejected since the appellants did not submit satisfactory proof of ownership of contiguous land within the required time. The first Certificate of Ownership on Form 4-1310 submitted by the appellants and received in the Land Office on January 22, 1959, shows them to be the owners in fee simple of the adjoining land as of January 12, 1958. To correct this certificate, the appellants submitted another Certificate showing them to be the owners of adjoining land in fee simple as of January 12, 1959. However, the corrected Certificate of Ownership was not received in the Land Office until January 26, 1959. The sale of the land was held on December 23, 1958, therefore the corrected proof of ownership of adjoining lands was not received within the 30-day period following the sale but on the 34th day after the sale. The law and the regulations require that satisfactory proof of ownership of adjoining lands must be submitted within the 30-day period after the sale. See 43 CFR, 1954 ed., 250.11. Where such satisfactory proof of ownership is not submitted within the time required, the preference right is lost and it is necessary to reject the preference right claim. Cf. Fred and Mildred Bohen et al., 63 I.D. 65 (1956). In the circumstances, it is unnecessary to consider the appellants' arguments against the award of the land to the Dunns, for the reasons given in the Manager's decision. As to whether the appellants have been reimbursed for the cost of publishing the notice of sale, in accordance with the applicable regulations, the record contains evidence submitted by the Dunns that a money order in the amount of $24.00 was forwarded to the appellants by certified mail on May 5, 1959, as evidenced by a post office receipt issued to the Dunns. This evidence was filed in the Land Office on May 8, 1959, within the 10-day period specified by the applicable regulation (43 CFR 250.12). The regulation requiring that such reimbursement be made directly to the applicant does not import that it need be submitted to him personally but only that it will not be made through the Land Office or other Bureau office; while it may be paid to the applicant in person, it may also be paid by mail.

There appears to be no irregularity in the handling of the sale by reason of the fact that the Dunns' bid for the land was received from a person other than the person named to represent them, since it appears that such person was an employee of the authorized agent for the Dunns.

Accordingly, and for the reason cited above, the preference right claim of the appellants must be and is hereby rejected.

The award of the land to Louis G. and Ruth N. Dunn must be set aside, however, as the sale of the lands must be vacated for the reasons explained below.

Under a broad program of safeguards against speculation in land sales, as well as in other land disposals, as announced recently by the Department, no land will be classified as suitable for sale at public auction where the land values are so unstable or undetermined that the land cannot be appraised confidently for accuracy and/or where the time span between the classification of the land and consummation of the sale is such that the land values would probably vary appreciably.

The records show that in the instant case the appraisal of the land was based on information which does not meet the Bureau's current standards for adequacy and reliability. It is therefore deemed necessary that the sale be vacated and the case records be remanded in order that the land may be reexamined and reappraised, in light of the anti-speculation policies of the Department, before any further action is taken toward disposition of the lands. In this respect it has been consistently held that the Secretary of the Interior retains jurisdiction to inquire into the disposal of public land so long as legal title remains in the United States. Cf. State of Wisconsin et al., 65 I.D. 265 (1958).

Accordingly, the decision appealed from is modified, and the sale held on December 23, 1958, is hereby vacated. When this decision becomes final, the case records will be remanded to the Manager of the Land Office, through the office of the State Supervisor at Sacramento, California, in order that purchase money may be refunded to the claimants. The State Supervisor will take appropriate action to have the land reexamined and reappraised, upon completion of which the land may be offered for sale on the motion of the Bureau, provided it is determined at that time that such disposal is in the public interest and consistent with present anti-speculation policies of the Department.

Mr. Keith Reid, Mrs. Helen Reid, Mr. Louis G. Dunn, and Mrs. Ruth N. Dunn are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00, for each appeal filed. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. and Mrs. Keith Reid, the adverse party to be served is:

Mr. and Mrs. Louis G. Dunn
c/o Landis, Brody & Martin
Suite 1116, 926 J Building
Sacramento 14, California

If an appeal is taken by Mr. and Mrs. Louis G. Dunn, the adverse parties to be served are:

Mr. and Mrs. Keith Reid
Route 1, Box 45-A
Mokelumne Hill, California

Charles P. Mead

Acting Director

Enclosure

DISTRIBUTION:

Landis, Brody & Martin, Attorneys at Law (Certified Mail)
Mr. and Mrs. Keith Reid (Certified Mail)
Mr. and Mrs. Louis G. Dunn (Regular Mail)
Hon. Clair Engle (United States Senate)
Lands Staff Officer
Appeals List No. 1
RBO

78710-60

DOCKET FILES

PUBLIC SALE * 3 Classification

MINING CLAIMS * 4 Determination of Validity

A public sale application will be rejected where the planned construction of a highway through the land in issue and the extensive development of a nearby town, have caused the land to have a potential for future homesites, resulting in the land values being so unstable that it cannot be appraised at present with confidence as to its value not having substantially increased during the time necessary to determine the validity of conflicting mining claims, so that final action could be taken on the sale.

John G. and Elizabeth M. Meyer, Sacramento 052352 (September 8, 1960)

RO

In reply refer to:

Sacramento 052352
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 8, 1960

Certified Mail
Return Receipt Requested

DECISION

John G. and Elizabeth M. Meyer : Public Sale
:
:

Decision of Manager Affrimed

John G. and Elizabeth M. Meyer have appealed from the Manager's decision, dated May 16, 1960, rejecting their public sale application for the reason that the land is located within an area rapidly changing to more intensive uses.

A field examination report made by Bureau personnel shows that a new Marysville-Grass Valley, limited access, four lane, divided highway is to be constructed in the near future, which will cross the land sought to be ordered into sale. The land is situated near the growing Town of Grass Valley, which is being extensively developed as a locale for summer, weekend and retirement homesites. With the completion of the new highway, the land in issue will be desirable for homesite development.

There is a mining claim on the land and field examination shows other mining claim corners scattered over much of the land in issue, so it could not be sold until the validity of these conflicting claims had been determined. Land values have increased in the area, and Bureau personnel report that the existence of the highway will cause the value of the land to increase again during the time required to determine the mineral character of the land and the validity of the conflicting claims.

The appellants on appeal assert their family has owned adjoining land for many years, and the appellants can use the land in issue in connection with the agricultural operation on their private land, even though the public land is mostly unfit for agricultural development, and during the next ten years they plan to develop a few homesites on the land they seek ordered into sale. The appellants also show that there is no "precise zoning" presently planned for the area.

The appellants have offered no evidence which would warrant changing the unfavorable classification of the land. In light of the changing conditions of the area as shown by the field examination, the application is rejected pursuant to the Department's recently announced statement of policy concerning public sales, which in pertinent part precludes the consummation of a sale of public land where land values are so unstable that the land cannot be appraised with confidence that the value will not be substantially changed before final action could be taken on the sale, and where the land is within the influence of a town where the land uses are changing to more intensive uses.

Accordingly, the decision of the Manager is affirmed.

John G. and Elizabeth M. Meyer are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal, there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. John G. and Elizabeth M. Meyer (Certified Mail)
Lands Staff Officer
Minerals Staff Officer
Appeals List No. 1
JHO'D

80532-60

appeal to Sec
affirmed A-28724 8-30-61

DOCKET FILES

PUBLIC SALE * 8 Rough or Mountainous

Where the only subdivision adjacent to an applicant's land is not mountainous or too rough for cultivation, his application under the second proviso of the public sale act is properly rejected, even though the greater part of the entire tract applied for may be mountainous or too rough for cultivation.

Henry T. Mitchell, Los Angeles 090440 (September 30, 1960)

DE UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Los Angeles 090440
5.04g

September 30, 1960
Certified Mail
Return Receipt Requested

DECISION

Henry T. Mitchell : Public Sale

Decision Affirmed

Mr. Henry T. Mitchell has appealed from the decision of the Chief, Land Adjudication Unit, dated March 1, 1960, rejecting his application for a public sale for the stated reason that the lands are not rough and mountainous within the purview of the statutes.

The tract applied for constitutes the following lands in T. 10 N., R. 4 W., S.B.M., California: the W½ and the SE¼ of Section 24, and the SE¼SE¼ of section 23. Mr. Mitchell first filed an application for these lands as an isolated tract. However, on April 7, 1959 he filed an amended application under the second proviso of the public sale act as the lands are not isolated from other Federally owned lands. The act provides in part as follows:

> " * * * any legal subdivisions of the public land, not exceeding 760 acres, the greater part of which is mountainous or too rough for cultivation, may, in the discretion of the said Secretary, be ordered into the market and sold pursuant to this section upon the application of any person who owns land or holds a valid entry of lands adjoining such tract, regardless of the fact that such tract may not be isolated or disconnected within the meaning of this section. * * * "
> (43 U.S.C., 1958 ed., sec. 1171.)

On appeal, the appellant requests that his application pursuant to this act be reconsidered. He contends that the lands are mountainous or too rough for cultivation and that they were so classified in 1954. He also states that he relinquished mining claims on the land with the expectation that he would be able to buy the land at public sale. In support of his position he refers to U.S. Geological topographic maps and also to four photographs he has furnished. The photographs are each designated on the back by one direction, "North", "East", etc. There is no other designation by which the lands applied for can be identified or distinguished. Several of the pictures show a hilly, irregular terrain. The picture labeled "West" is taken from the top of a hill and in the background is a long, wide stretch of apparently level ground.

A report of a field examination of the lands, dated October 14, 1959, indicates that the N½NW¼ and the E½SE¼ of section 24 and the 40 acre subdivision, the SE¼SE¼ of section 23, are not mountainous or too rough for cultivation as they are nearly level lands with a slight slope. Pictures included in the report clearly identifying the lands show support for this conclusion.

In considering applications under the public sale act, the pertinent regulations provide that regard will be had to the character of each subdivision applied for. 43 CFR 250.7(c). It is significant that the lands owned by the appellant are adjacent only to the 40 acre subdivision in section 23. This particular subdivision is reported to have a slope of 60 feet in ¼ mile, or approximately 4.4% which is verified by the U.S. Geographical topographical map of the tract. As this particular subdivision lies further west than the other lands in the tract applied for, it would appear also from the picture submitted by appellant labelled "West" that such land is part of a nearly level plain. The Department has held that where the greater part of the tract which adjoins the appellant's land is gently sloping land which could be cultivated if irrigated, the public sale application is properly rejected. *Albert N. Froom*, A-27124 (May 23, 1955). It has also held that the suitability of the land for farming or cultivation in other respects does not matter. As long as the land is almost level it cannot be disposed of under the second proviso of the public sale act as it is neither mountainous nor too rough for cultivation *William F. Cramer*, A-26747 (October 13, 1953).

The fact that other lands applied for located in section 24 may be mountainous or too rough for cultivation does not preclude the rejection of appellant's application where his lands are not adjacent to such lands. "An entire tract composed of more than one legal subdivision will not be offered upon the ground that the greater part of the tract is mountainous or too rough for cultivation, if taken as a whole." 43 CFR 250.7(c).

Therefore, the tract cannot be sold pursuant to appellant's application and the decision rejecting the application is affirmed.

Henry T. Mitchell is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Hon. James Roosevelt, House of Representatives
Mr. Henry T. Mitchell (Certified Mail)
Mr. Joseph B. Copelan, Attorney for Appellant (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JB

DOCKET FILES

PUBLIC SALE * 2 Application
3 Classification

Since land within the influence of expanding cities or towns where land uses are changing to more intensive uses is within the purview of the Secretary's policy not to classify such land as suitable for sale at auction, it is proper to cancel the sale and reject the public sale application.

The authorized officer may at any time, previous to issuance of a cash certificate, determine that the land should not be sold.

George H. Radda Jr., LA - 0164825 (October 21, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
LA-0164825
5.04g

October 21, 1960

Certified Mail
Return Receipt Requested

DECISION

George H. Rodda, Jr. : Public Sale Application

Decision Affirmed

Mr. George H. Rodda, Jr. has appealed from the decision of the Chief, Lands Adjudication Unit, Los Angeles Land Office, dated April 25, 1960, which cancelled the sale and rejected his public sale application for the reason that subject land had been reclassified as not suitable for sale at public auction.

The record shows that the appellant was declared the high bidder and purchaser of Lots 12, 13, 14 and 15, sec. 6, T. 5N., R. 3 W., S. B. M., California, offered at public auction on October 7, 1959, pursuant to Mr. Rodda's public sale application filed on July 30, 1959. (43 U.S.C., 1958 ed., sec. 1171). It is disclosed that the subject land is located approximately two miles from Apple Valley, California, within an area of very rapid urban and residential expansion.

On February 23, 1960, the Secretary announced his policy pertaining to land sales, the pertinent part applicable to the instant case, is as follows:

> "In connection with the function of the Bureau of Land Management under the authority of the Public Sales Act (Section 2455 R.S.) no land will be classified as suitable for sale at auction thereunder if: (b) the land is within the influence of expanding cities or towns where the land uses are changing to more intensive uses".

The appellant contends that the Department's policy should not be applied retroactively.

Section 7 of the act of June 28, 1934 (48 Stat. 1272) as amended by the act of June 26, 1936 (49 Stat. 1976: 43 U.S.C. 1958 ed., 315 F.) authorizes the Secretary of the Interior in his discretion to examine and classify any lands withdrawn or reserved by Executive Order 6910 of November 26, 1934, or Executive Order 6964 of February 5, 1935, and amendments thereto for any other use than the use provided for under the act and open them for disposition in accordance with such classification under the applicable land laws.

In exercising his discretionary authority, the Secretary, or his delegate, may properly consider the weight all factors bearing on the suitability of the land for use or disposal, including the effect on the public interest, Nelson A. Gertulla, 64 I. D. 225 (1957).

The regulations applicable to the public sale law provide that the authorized officer may, at any time previous to issuance of a cash certificate, determine that the land should not be sold and such action creates no contractual or other obligations on the part of the United States, 43 C.F.R. 250.5.

Since the subject land is definately within the influence of expanding cities or towns where land uses are changing to more intensive uses in an area of very rapid urban and residential expansion and is correctly classified as not suitable for public sale, the cancellation of the sale and rejection of the public sale application was proper.

Accordingly the decision appealed from is affirmed.

The appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the rugulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:
John B. Piccolo

Enclosure

Distribution
George H. Rodda, Jr. (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RLE

82839-60

DOCKET FILES

PUBLIC LANDS * 1 Generally

PUBLIC SALE * 3 Classification

Lands valuable for minerals locatable under the U. S. mining laws are not subject to disposal under the public sale law.

A public sale application for a tract which is essential for access to mineral and public recreation land is properly rejected.

Norman B. Livermore and Sons, Sacramento 051549 (October 24, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Sacramento 051549
5.04g

October 24, 1960

Certified Mail
Return Receipt Requested

DECISION

Norman B. Livermore :
and Sons : Public Sale
:

Decision Affirmed

Norman B. Livermore and Sons, a partnership consisting of Norman B. Livermore, Jr., George S. Livermore, John S. Livermore, Horatio P. Livermore and Robert Livermore, has appealed from the decision of the Manager, Sacramento Land Office, dated January 22, 1959, which rejected the appellant's public sale application for the reasons that all of the lands applied for, except the E$\frac{1}{2}$NW$\frac{1}{4}$ and NE$\frac{1}{4}$SW$\frac{1}{4}$ section 25, T. 10 N., R. 7 W., M.D.M., are mineral in character and that the 120 acres specifically described above are not available because they do not comprise an isolated tract.

The appellant alleges that the lands are nonmineral and are isolated.

The land office records show that the lands, other than the 120 acres, lie within a zone that has been the second largest producer of quicksilver in the United States, that although the district has been extensively prospected, much of the prospecting was superficial and little of it systematic and that the possibilities for the discovery of new ore bodies are not exhausted.

The Department has held that lands which are valuable for minerals that are locatable under the U. S. mining laws are not subject to disposal under the public sale law. See 30 U.S.C. section 21; Buck Willcoxson, A-27402 (December 17, 1956).

The appellant has submitted no evidence which controverts the geologic classification of the land as mineral and in the absence of positive proof that the classification is erroneous it will not be disturbed. Mary Refugio Jackson et al., A-27236, A-27237 (February 29, 1956).

A supplemental field report dated May 25, 1960, states that the 120 acres specifically described above are non-mineral in character but that they form a key access tract to mineral and to public recreation land and for those reasons it is recommended for retention in the public domain.

Review of the status of the 120 acres shows that they do not constitute an isolated tract and are not otherwise subject to disposition under the public sale law.

The Department has held that a public sale application will be rejected where the land applied for is an essential means of public access to other public lands. Cf. Lafayette M. Hughes, A-27213 (December 28, 1955).

Therefore, the 120 acre tract is properly retained for public use.

Accordingly, the Manager's decision is affirmed.

Norman B.Livermore and Sons is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

RJMcCormick

Enclosure

DISTRIBUTION:

Norman B. Livermore and Sons (Certified Mail)
Lands Staff Officer
Appeals List No. 1
MHS

DOCKET FILES

PUBLIC SALE * 3 Classification

A case will be remanded to obtain additional information, where the record does not contain sufficient facts to warrant the Manager's finding that the lands are unsuitable for public sale disposition within the criteria established by the Departmental statement of policy announced February 23, 1960.

Joseph T. Rishwain, Sacramento 051853 (October 31, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Sacramento 051853
5.04g

October 31, 1960

DECISION

Joseph T. Rishwain : Public Sale

Mr. Joseph T. Rishwain has appealed from that part of the Manager's decision, dated July 28, 1960, rejecting his amended public sale application as to certain lands for the reasons that (1) land values in the area are unstable due to the proximity of the lands to expanding rural communities and the City of Sacramento, and (2) the lands are within the influence of the expanding rural area of Latrobe.

The appellant has not appealed from that part of the Manager's decision rejecting the amended application as to land which has been classified as mineral in character, but he states that he desires the remaining non-mineral lands ordered into market and sold at public auction pursuant to the "mountainous or too rough for cultivation" proviso of the Public Sales Act, as amended (43 U.S.C., 1958 ed., 1171). Certain other lands named in the amended application were previously rejected, and no appeal taken, so the lands germane to this appeal are the NE$\frac{1}{4}$SE$\frac{1}{4}$ sec. 23; lots 1 and 2, sec. 24; and the Tiger Quartz Mine (Mineral Survey 3904) in the E$\frac{1}{2}$NW$\frac{1}{4}$ sec. 25, T. 8 N., R. 9 E., M.D.M., California.

The Public Sale Act, *supra*, in pertinent part, provides that such lands as are in issue, "may, in the discretion of the said Secretary, be ordered into market and sold pursuant to this section." See 43 CFR 250.4(b) and 296.1(a). Pursuant to this authority, the Secretary of the Interior announced on February 23, 1960, his statement of policy relating to the sale of lands under this Act, which in pertinent part provides that no lands will be classified as suitable for such disposition where (1) the land values are so unstable and undetermined that the land cannot be appraised with confidence as to accuracy, or (2) the land is within the influence of expanding cities or towns where land uses are changing to more intensive uses.

A Bureau field examination report shows the lands are situated within two miles of an improved county road and the lands are accessible by unimproved roads. The lands are located adjacent to the Cosumnes River, approximately 30 miles east of the growing City of Sacramento, California. An earlier field examination report shows the area is typical low-lying brushland, with poor grazing value because of the thick, non-commercial brush and timber. The lands are about 3 air miles southeast of the small community of Latrobe. The unimproved road to the lands leads through two gates on private land.

On appeal, the appellant submits a contour map asserting it shows the lands are hilly and have no great value for housing purposes. Mr. Rishwain states the lands have use for agricultural development in connection with his adjoining private lands, but have no other value. The appellant has submitted photographs which he claims show the unimproved road to the lands has become inaccessible by automobile because of brush growing on the roadway. Mr. Rishwain asserts that the community of Latrobe shows little expansion, and its growth is not in the direction of the lands in issue.

The case record does not conclusively show whether land values in the area are unstable or whether the lands are within the influence of an expanding population area where land uses are changing to more intensive uses. Accordingly, the Manager's decision is vacated as to the lands in issue, and the case is remanded to the Bureau's State Supervisor at Sacramento, California, for a further field examination to determine (1) whether the lands come within the criteria established by the Departmental statement of policy as lands which are unsuitable for sale, and (2) if found suitable, whether the current fair market value of the lands is greater than $20.00 per acre as determined by the last appraisal of the lands based on information obtained between April 3 and June 5, 1957, inclusive. A determination should also be made as to whether the public lands fronting on the River have potential value for public recreational purposes development and should be retained for such disposition. Further processing of the amended application is suspended pending completion of action in accordance with this decision.

Edward Woozley
Director

DISTRIBUTION:
Hon. John J. McFall, House of Representatives (Regular Mail)
Mazzera, Snyder & DeMartini, Attorneys for Appellant (Regular Mail)
Mr. Joseph T. Rishwain (Regular Mail)
Lands Staff Officer
Minerals Staff Officer (4)
Appeals List No. 1
JHO'D

Appeal to Sec
Remanded A-28730 9-24-62

DOCKET FILES

PUBLIC SALE * 1 Generally

* 3 Classification

Where it is determined after a public sale has been held and prior to the issuance of cash certificate in connection therewith, that the land is in the influence of expanding cities and towns and the land uses are changing to more intensive uses, it is proper to vacate and cancel the sale.

Bernard E. Loper, Jr., Rose Roth Loper Los Angeles 0134254 (November 7, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0134254

5.04g

November 7, 1960

DECISION

Bernard E. Loper, Jr.,
Rose Roth Loper

: Public Sales Application

Decision affirmed

Mr. Bernard E. Loper, Jr., and Mrs. Rose Roth Loper, have appealed from a decision of the Chief, Land Adjudication Unit, Los Angeles Land Office, dated August 26, 1960, vacating and cancelling a sale of public land described as the NE¼SW¼, sec. 13, T. 7 S., R. 2 E., S. B. M., for which they had been declared purchasers. The sale which was held on May 11, 1959, was vacated for the reason that it has been subsequently determined that the land is located within the influence of expanding towns and cities where land uses are changing to more intensive uses, and that in conformity with the policies announced by the Secretary of the Interior on February 23, 1960, the land should not be disposed of.

The records show that the land is located some 25 miles from the citites of Palm Springs and Hemet, which lie to the northeast and to the northwest, respectively, in Riverside County, California. The town of Idyllwild lies to the north about 12 miles. A recent reexamination of the land was made by the Bureau in light of the recently announced policies of the Secretary referred to above, and it has been determined that the land is located in an area where the land uses are rapidly changing from agricultural uses to the more instensive uses for recreational purposes. The whole area is becoming a weekend recreational area for the San Bernardino-Riverside Metropolitan area which lies forty miles to the northwest of the land in question. Good roads and highways make the land readily accessible to the large metropolitan areas. The tremendous population growth in the State of California has created an increasing demand for public recreation areas, particularly those close to the larger cities and towns.

The appellants contend in substance that they have complied with all of requirements of the laws and regulations relating to the sale of the land, and title thereto should be conveyed to them. The appellants assert that since they were declared the purchasers of the land some eleven months prior to the time the Secretary of the Interior announced the policies on February 23, 1960, referred to in the decision appealed from, the policies should not be made retroactive to the time the sale was held in this case. The appellants further contend that the land is a completely isolated tract of land without access, and though it is indicated that it is only 25 miles to Palm Springs and Hemet, and 12 miles from Idyllwild, these distances may be correct "as the crow flies", but the distances from the cities and towns are much greater by road, which traverse considerable mountainous terrain. The appellants conclude that for the reasons stated, the decision vacating and cancelling the sale of land to them, should be reversed and that they should be allowed to obtain title to the land.

With respect to the appellants' contention that the recently adopted policies of the Department should not be made retroactive to the sale in question, the regulation, 43 CFR 1954 ed. 250.5, which was in force when the sale was held, provides in applicable portion that" * * * until the issuance of a cash certificate, the authorized officer may at any time determine that the lands should not be sold, and the applicant or bidder has no contractural or other rights against the United States * * *". The policies announced by the Secretary on February 23, 1960, were adopted as a safeguard against speculation in land sales under the Public Sales Act (section 2455 R. S., 43 U. S. C., 1958 ed., sec. 1171), as amended. These policies, which implement the above-cited regulations, are applicable to any public land held for sale under the public sale laws for which no cash certificate has yet been issued. In this respect it has been consistently held that the Secretary of the Interior retains the jurisdiction to inquire into the disposal of public land so long as the legal title remains in the United States. Cf. State of Wisconsin et al., 65 I. D., 265 (1958).

The appellants have presented no persuasiveargument that would overcome the determination of the Bureau to vacate and cancel the sale of the land involved.

Accordingly, the decision appealed from is affirmed.

When this decision becomes final, the case record will be remanded to the Manager through the Bureau's office of the Assistant to the State Supervisor, Los Angeles, in order that any moneys due the appellants may be refunded.

Mr. Bernard E. Loper, Jr., and Mrs. Rose Roth Loper are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure
Distribution on page 3

DISTRIBUTION:

Mr. and Mrs. Bernard E. Loper, Jr. (Certified Mail)
Hon. Edgar W. Hiestand, House of Representatives
Lands Staff Officer
Appeals List No. 1
RBO

appeal to Sec
Remanded, A-28747
4-25-1962

DOCKET FILES

PUBLIC SALE * 3 Classification

Where lands have been reclassified for retention in Federal ownership as coming within the purview of the Department's anti-speculation policy, the reclassification will not be disturbed in the absence of substantial, positive evidence that it is erroneous.

William E. Davis, Sacramento 058358 (November 8, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Sacramento 058358
5.04g

November 8, 1960

DECISION

William E. Davis : Public Sale

Decision Affirmed

William E. Davis has appealed from the decision of the Manager, dated May 16, 1960, which rejected his above-identified public sale application and vacated the proposed sale for the reason that the lands were reclassified for retention in Federal ownership pursuant to principles announced in the Department's anti-speculation policy statement of February 20, 1960.

The lands had been offered for sale on September 15, 1959, pursuant to the appellant's application, and he was the high bidder. Thereafter, further action was suspended on the sale for a period of 30 days to permit adjoining land owners to assert preference right claims. On December 10, 1959, action was suspended on all public land conveyance transactions requiring appraisal activity for a 60 day period pursuant to a Congressional request. The suspension was lifted on February 23, 1960, and the land here involved was then reclassified for retention in Federal ownership because the land is within an area of rapidly fluctuating land values and can not be appraised with confidence as to accuracy, the land is within the influence of an expanding city, and in the vicinity of proposed highway construction, and the land value will change during the time span required for a reappraisal which would be necessary if the land were again offered for sale.

The appellant denies some of the factual bases mentioned by the Manager as reasons for the reclassification of the lands, but he has not submitted any corroborative evidence to support his assertions. He also challenges the legal right of the Manager to vacate the sale and reclassify the lands after he had paid the purchase price and been declared the high bidder. In effect he believes he was entitled to be declared purchaser 30 days after the date he was declared the high bidder, and he states he should not be penalized for the delays of the Bureau, the later suspension order, and the subsequent announced anti-speculation policy of the Department. In this connection he states also that he believes the policy was concerned with variations in appraisals between the time of classification and the date of proposed sales and not subsequent thereto.

The Department has consistently held, as noted in the Manager's decision, that a proposed sale of public lands can be withdrawn and the sale vacated at any time before the issuance of a cash certificate (43 CFR 250.5).

See James Howard Waterhouse, Arizona 020959 (August 15, 1960). No cash certificate had been issued in this case.

Furthermore, the classification of the lands in question was revised after a careful study by qualified land appraisers of the Bureau, and it is supported by record data. Where lands have been classified as not suitable for public sale, the classification will not be disturbed in the absence of substantial, positive evidence that the classification is erroneous. The appellant has failed to show conclusively that the revised classification of these lands is in error. Cf. Mary Refugio Jackson, A-27236 (February 29, 1956).

Accordingly, the decision appealed from is hereby affirmed.

William E. Davis is allowed the right of appeal to the Secretary of the Interior in accordance with the regulation in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director

DISTRIBUTION:

Mr. William E. Davis (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JJS

Appeal to Sec
Remanded A-28728
7-11-62

DOCKET FILES

PUBLIC SALE * 1 Generally

The Government is not required to make disposal of lands by public sale where such disposal would not be in the best interests of the Government.

Where disposal of public lands at public sale would be contrary to the Secretary's Anti-Speculation Policy, the application for sale will be rejected.

Monolith Portland Cement Company, Los Angeles 0152759 etc. November 9, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0152759 etc.
5.04g

November 9, 1960

Certified Mail
Return Receipt Requested

DECISION

Monolith Portland Cement Company : Public Sale Applications
:
:

Decision Affirmed
Request for Hearing Denied

Monolith Portland Cement Company has appealed from a decision of the Chief, Land Adjudication Unit, Los Angeles Land Office, dated June 7, 1960, rejecting its 30 public sale applications (listed in the appendix hereof) covering approximately 19,325 acres of lands in Ts. 31 and 32 S., R. 41 E., M.D.M., San Bernardino County, California.

The applications were rejected for the reasons that the lands are located within the influence of a rapidly expanding area where the land uses are changing to more intensive uses and that the disposition of the lands would be contrary to the Secretary's Anti-Speculation Policy.

The appellant owns most of the alternate sections, in checkerboard fashion within the two townships involved. The applications described the lands applied for as deeply eroded and unsuitable for agriculture and covered by the appellant's grazing permit #14; it was stated that acquisition is desired for the purpose of "Consolidating Cattle Range." It asserts on appeal that transfer of the applied for lands to private ownership would foster development and improvement thereof and that acquisition would not be contrary to or inconsistent with the anti-speculation policy.

Under the provisions of section 7 of the Taylor Grazing Act (43 U.S.C. 315f) the Secretary "is authorized, in his discretion, to examine and classify * * *and to open such lands * * *for disposal in accordance with such classification under applicable public-land law * * *." (43 CFR 250.4b) If classification is made that the lands under application are suitable for public sale then the Secretary may "order into market and sell at public auction * * * at not less than the appraised value * * *which, in his judgment, it would be proper to expose for sale * * *." (Public Sale Act, 43 U.S.C. 1171). Thus it is perfectly clear that classification of land as suitable for public sale is a matter of discretion with the Secretary of the Interior and he is under no obligation to order lands into public sale. He will not order lands into sale unless it is in the public interest to make disposal thereof.

By the Anti-Speculation Policy of February 20, 1960, the Secretary directed a broad program of safeguards against speculation in land sales under the Public Sale Act. He directed that "classifications shall accurately reflect the highest and best use presently and prospectively" and that "no land will be classified as suitable for sale at auction if: * * *The land is within the influence of expanding cities or towns where the land uses are changing to more intensive uses."

The reports of field examination upon which the Land Office decision was premised show that the lands under application are situated only a few miles north of the Boron-Kramer Area and not far from the highly publicized California City development. A portion of the lands are traversed by U. S. Highway 395, which is the main north-south highway along east side of the Sierra Mountain Range. The reports indicate that the State of California proposes to build a new super highway paralleling the present Highway 395. Considering these factors it appears that the lands applied for will become more readily accessible to the public and in higher demand due to the present and forseeable continued expansion of the Boron-Kramer and California City areas. Therefore, since the lands involved are within the influence of expanding areas where land uses are changing, the Bureau, will not classify the lands as suitable for disposal under the Public Sale Act. In view thereof, it does not appear that any purpose could be served by a hearing in connection with this appeal and the appellant's request for a hearing is denied.

We also note that the lands are now being utilized by the appellant for grazing purposes - the very purpose for which it alleges acquisition is desired. But there is no indication in the record that the appellant's operations will be hampered or curtailed if a public sale is not ordered. Consequently, it appears that there is no compelling reason from the viewpoint of the appellant requiring disposal of the lands at this time.

The Secretary's directive of February 20 ordered the Bureau to "Institute a program of continual review of classifications made under Sec. 7 of the Taylor Grazing Act, or any other act which carries its own land classification authority, in order that classifications shall accurately reflect the highest and best use presently and prospectively." In the event these lands may in the future be classified as suitable for disposal by public sale, such inquiry as may be necessary will be made concerning the mining claims covering the lands, and disposal will be directed in accordance with the facts then found.

Accordingly, the classification that these lands are not suitable for public sale being correct and proper, the decision rejecting the public sale applications is affirmed.

Monolith Portland Cement Company is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5 for each of the applications included in the appeal. If the appeal covers all adversely affected by this decision the total filing fee is $150.00. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Norman Elliott, Attorney at Law (Certified Mail)
Monolith Portland Cement Company (Regular Mail)
Lands Staff Officer
Appeals List No. 1
BF

APPENDIX

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appeal to Sec
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DOCKET FILES

PUBLIC SALES * 3 Classification

An application for public sale is properly rejected where the land is valuable for timber, has recreational potential, and should be retained in public ownership as part of a timber management program and for watershed protection.

Agripina Acosta, Sacramento 051134 (November 9, 1960)

LO

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

In reply refer to:
Sacramento 051134
5.04g

November 9, 1960

Certified Mail
Return Receipt Requested

DECISION

Agripina Acosta : Public Sale
:
:

Manager's Decision Affirmed

Miss Agripina Acosta has appealed from a decision of the Manager dated June 20, 1960, rejecting her application to have certain lands located in T. 24 N., R. 15 W., and T. 24 N., R. 16 W., M.D.M., sold at public sale as isolated tracts under the Public Sale Act (43 U.S.C., 1171). The reasons stated for the rejection are that the lands have not been classified as proper to be ordered into the market for public sale as they are valuable for multiple use purposes, including timber and forage production, watershed protection, and recreation, and are within a Bureau management plan which would be disrupted by the sale of the lands adverse to the public interest.

Classification of lands under the Public Sale Act is within the discretion of the Secretary of Interior pursuant to the authority granted by the Taylor Grazing Act (43 U.S.C., 1952 ed., sec. 315f). In exercising this discretion he can consider all factors which relate to the public interest. *Nelson A. Gerttula*, 64 I.D. 225 (1957). Where a classification is adverse to an appellant, the appellant must sustain the burden of showing by substantial and positive evidence that the classification is in error. *Mary Refugio Jackson et al.*, A-27236, etc. (February 29, 1956).

The appellant has indicated that she desires the land for the purpose of raising stock. She asserts that she should be entitled to get some benefits from the lands and that the local and State governments would obtain benefits from taxes. She states that the lands have been used for hunting and fishing.

The contentions of the apellant are insufficient to warrant any change in the classification of the lands. They do indicate the value of the land for public recreational purposes. In addition to the recreational potential of the land, a field report shows that retention of the land in Federal ownership is desirable for conservation purposes for maintaining watershed protection, forage production, and stablizing the local economy by providing a permanent source of timber supply. The value of the timber on the lands is estimated at $80,000. Although the lands are isolated, they are located close to other large blocks of Federally-owned lands and are within a Bureau resource management program. For these reasons it is apparent that the best public interest will be served in retaining the lands in Federal ownership. See Garfield Taylor, A-28205 (April 26, 1960). and Nelson A. Gerttula, supra.

Therefore, the application was properly rejected, and the decision is affirmed. Cf. Leroy Henthorne et al., Sacramento 049405 etc. (March 28, 1958) which affirmed the rejection of Indian Allotment applications for lands in this area for the same reasons.

Agripina Acosta is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director

Enclosure

DISTRIBUTION:

Miss Agripina Acosta (Certified Mail)

Lands Staff Officer
Appeals List No. 1
JB

10

DOCKET FILES

PUBLIC SALE * 3 Classification

Where lands have been reclassified for retention in Federal ownership, the classification will not be disturbed in the absence of substantial, positive evidence that the classification is erroneous.

George C. Gianulias, Sacramento 058602 (December 14, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Sacramento 058602
5.04g

December 14, 1960

Certified Mail
Return Receipt Requested

DECISION

George C. Gianulias	:	Public Sale

Decision Affirmed

Mr. George C. Gianulias has appealed from a decision of the Manager, dated June 2, 1960, which rejected his above-identified public sale application for the reason that the lands in question have been reclassified for retention in Federal ownership pursuant to the Department's anti-speculation policy announcement of February 20, 1960. The Manager stated it had been determined upon a further study of the record data that the land values are so unstable that the lands cannot be appraised with confidence as to accuracy and the present appraisal is either out-of-date or unacceptable, or both, in light of present appraisal standards; consequently, sale of the lands at the present time would be adverse to the public interest.

The appellant asserts that the lands have been appraised on two separate occasions, the latter appraisal representing an increase in price of approximately 33 per cent over the first appraisal, and he believes the latter appraisal is satisfactory. However, he states he is willing to accept any new appraisal that the Bureau may again place on the lands.

The appellant's statements are not sufficient to warrant a change in the classification of the lands. The Department has consistently held that a classification will not be disturbed in the absence of substantial, positive evidence that the classification is erroneous, and the appellant has failed to offer any persuasive evidence that the reclassification is erroneous. Cf. Mary Refugio Jackson, A-27236 (February 29, 1956).

The Manager's decision is therefore affirmed.

George C. Gianulias is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H.

Enclosure

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Mr. George C. Gianulias (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JJS

DOCKET FILES

PUBLIC SALE * Classification

Where public land which was previously classified for public sale is determined to be within the influence of expanding cities or towns where land uses are changing to more intensive uses, where the time span between classification and likelihood of consummation of the sale is such that land values are likely to change, or where land values are so unstable or undetermined that the public land cannot be appraised with confidence as to accuracy, the classification for public sale is properly voided and the sale vacated.

Otto Berk, Los Angeles 0155998 (December 14, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0155998
5.04g

December 14, 1960

Certified Mail
Return Receipt Requested

DECISION

Otto Berk : Public Sale

Decision Affirmed

Mr. Otto Berk has appealed from a decision of the Chief, Land Adjudication Unit, dated July 18, 1960, which vacated the proposed public sale of certain land applied for under his application, Los Angeles 0155998, because the land is within the influence of expanding cities or towns (Escondido, Lake Hodges and Del Dios) where land uses in the area are changing to more intensive uses and as a result values are in a state of fairly rapid change.

The record reveals that the town of Escondido, California, is located three miles to the north, and that Lake Hodges and Del Dios are immediately east, of the land applied for. The record further reveals that the land in question was examined and appraised by Bureau personnel in May 1959, the classification thereof as suitable for disposition at public sale having been made in August 1959; however, that this classification was revoked in June 1960, because of market conditions in the area of the land, as noted above, and in light of the Department's anti-speculation policy in public land sales.

The appellant denies that any influence is exerted on the land in question by expanding towns or cities since the land sought is an 80-acre tract located on the ridge of a comparatively steep and rough mountain, without public access, and without water and public utilities. The appellant submits the prior decision which classified the land as suitable for disposal by public sale and not suitable for disposal as small tracts due to the adverse topography, lack of access and water , was correct. He urges that the land be classified for public sale. The appellant also submits a statement by a real estate investment company which in substance corroborates the appellant's contention and statement concerning the influence of the neighboring towns and cities, topography, access, etc., and in addition recites that recent sales in the area are not comparable to the land in question, with the exception of one, in which the sale was made three years ago at $150.00 per acre.

Under the anti-speculation policies of the Department, noted in the Manager's decision, public lands will not be classified as suitable for sale at public auction under the provisions of the public sale law if, (1) the lands are within the influence of expanding cities or towns where the land uses are changing to more intensive uses, (2) where the time span between classification and the likelihood of consummation of the sale is such that land values are likely to change, and (3) where land values are so unstable or undetermined that the land cannot be appraised with confidence as to accuracy.

Since the record shows that the land in question comes within the purview of at least one or more of the provisions of the announced anti-speculation policy of the Department, it was proper to vacate the sale in the instant case. The showing submitted by the appellant does not warrant any change in this action. It has been consistently held that the Secretary of the Interior retains jurisdiction to inquire into the disposal of public lands so long as legal title remains in the United States. Cf. State of Wisconsin et al., 65 I.D. 265 (1958); 43 CFR 250.5

Accordingly, the Manager's decision is affirmed.

Mr. Otto Berk is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Otto Berk (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JJS

DOCKET FILES

PUBLIC SALE * 3 Classification

ADJUDICATION * 1 Generally

Lands valuable for minerals locatable under the United States mining laws are not subject to disposal under the public sale law.

Where the appellants filed claims under the mining laws for certain land, no consideration will be given to their allegations on appeal that the lands are non-mineral in character.

William R. Murphy and Frances V. Murphy, Sacramento 058006 (December 14, 1960)

In reply refer to:
Sacramento 058006
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

December 14, 1960

Certified Mail
Return Receipt Requested

DECISION

William R. Murphy and : Public Sale
Frances V. Murphy :
:
Decision Affirmed
:

William R. Murphy and Frances V. Murphy have appealed from the decision of the Manager, Sacramento, Calfiornia, Land Office, dated August 8, 1960, which rejected their public sale application for the reason that the subject land has been classified as prospectively valuable for Chromite and is therefore not available for disposal under the Public Sale Act.

The appellants allege that the land is not valuable for chromite because they have prospected the area and they have been unable to locate any mineral suitable for commercial mining and that the California Journal of Mines and Geology, Vol. 44, #2, April 1948, PP. 159-188, makes no mention of chromium presumably because of the poor quality of the deposits.

The Geological Survey report dated October 8, 1959 states that the land in issue may be valuable for chromium and in support thereof cites CDM Bull, 134, pt. 2, Ch 1,1946. A field report by a Bureau of Land Management Valuation Engineer, dated October 21, 1954 states that the subject land is mineral in character though the quality is too low to make mining profitable under the prevailing market conditions, but that chromite mines in the immediate area were operated in 1954.

The appellants admit that they hold a mining claim for the property in issue but they state that they have made no discovery of valuable mineral thereon.

The Department has held that lands which are valuable for minerals that are locatable under the U.S. mining laws are not subject to disposal under the public sale law. See 30 U.S.C. sec. 21; Buck Willcoxson, A-27402 (December 17, 1956).

The appellants have submitted no probative evidence that controverts the geologic classification of the land as mineral and in the absence of positive proof that the classification is erroneous, it will not be disturbed. Cf. Mary Refugio Jackson et al., A-27236, A-27237 (February 29, 1956).

Moreover, where the appellants admit that they filed a mining claim for the subject land, no consideration will be given to their present allegation that the land is not mineral in character.

Accordingly, the Manager's decision is affirmed.

William R. Murphy and Frances V. Murphy are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

William R. and Frances V. Murphy (Certified Mail)
Appeals List No. 1
MHS

DOCKET FILES

PUBLIC SALE * 2 Application

A public sale application for land located within the influence of expanding cities or towns, where the lands are changing to more intensive uses, is properly rejected.

Joseph Richard Silveira, Los Angeles 0150442 (December 21, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Los Angeles 0150442
5.04g

December 21, 1960

Certified Mail
Return Receipt Requested

DECISION

Joseph Richard Silveira : Public Sale

Decision Affirmed

Mr. Joseph Richard Silveira has appealed from the decision of the Chief, Land Adjudication Unit, dated July 12, 1960, which cancelled the authorization for sale of land pursuant to the above-noted application and rejected the application for the reason that the Department anti-speculation policy, dated February 23, 1960, provides that public land will not be classified for sale where it lies within the influence of expanding cities or towns and the land uses are rapidly changing to more intensive uses. The decision stated that the subject land is located approximately four miles southeast of Apple Valley, California.

The appellant alleges that the subject land is located northeast of Apple Valley, in an area known as Fairview Valley, and that this area is not under extensive and intensive promotional development for recreational and homesite uses. He asserts that the area is one of small cabin homesite development under the Small Tract Act.

The appellant is correct in his allegation that the subject land is located northeast of Apple Valley. The lands were incorrectly identified in the decision appealed from. His statements concerning development of the lands under the Small Tract Act, however, support the findings in the decision appealed from, namely, that the land is not suitable for disposal at public sale but suitable for recreational and homesite development.

The appellant has submitted no positive and substantial evidence to show the classification of the lands is in error. See Departmental decision Mary Refugio Jackson et al., A-27236 (February 29, 1956).

Accordingly, the decision appealed from is affirmed.

Mr. Joseph Richard Silveira is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

John B. Ceccolo

Enclosure

Distribution - Page 2

DISTRIBUTION:

Joseph Richard Silveira (Certified Mail)
Lands Staff Officer
Appeals List No. 1
MHS

DOCKET FILES

PUBLIC SALES * 3 Classification

It is proper to refuse to classify public lands as suitable for disposal under the public sale laws, where the lands are located within the influence of expanding towns and cities, and the land uses are rapidly changing to more intensive uses.

Louetta Grace Boadway, Los Angeles 093409 (December 27, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Los Angeles 093409
5.04g

December 27, 1960

Certified Mail
Return Receipt Requested

DECISION

Louetta Grace Boadway : Public Sale Application

Decision Affirmed

Mrs. Louetta Grace Boadway has appealed from a decision of the Chief, Lands Adjudication Unit, Los Angeles Land Office, dated August 18, 1960, rejecting her above-identified public sale application filed under the Public Sale Laws, as amended (43 U.S.C., 1958 ed., sec. 1171), for the stated reasons that the land is located within the influence of expanding towns or cities where the land uses are changing to more intensive uses, and where the land values are steadily appreciating, and, therefore, under the present policies of the Department cannot be classified for public sale.

The land in question is located in the Apple Valley area of San Bernardino County, California, approximately 6 miles north of the town of Apple Valley and 8 miles northwest of the city of Victorville. Apple Valley is rapidly growing recreation and homesite center in that part of southern California. The surrounding area is rapidly being subdivided and sold for building lots due to the ever increasing population, and rough and mountainous land that was once considered useless are now being acquired for speculation purposes. In fact San Bernardino County has experienced a higher rate of increase in population than all of the other counties in southern California, except two. The records show that the population of this county of 281,642 in 1950 has increased to approximately 500,000 in 1960, a gain of some 76%. It is estimated that its population will reach or exceed 1,000,000 in 1980. Because of this extreme increase in population the land use in the area in which the land in question is located is rapidly changing to more intensive uses and as a result values are in a state of fluctuation in that the prices are appreciating to a considerable extent. Accordingly, it has been recommended that the land not be classified for public sale at the present time.

The appellant contends in substance that the land applied for would be of no value to any one but her since it adjoins land owned by her, upon which she has constructed valuable improvements, and because of its rough mountainous character. The appellant also asserts that the land has been previously classified as not valuable for homesteads or recreation because of its rough character and inaccessibility. The appellant further asserts that she has waited 9 years to purchase the land and is willing to pay a fair price for it because it does adjoin land owned by her, and that if the land was in a different location she would not have it as a gift. The appellant has submitted a number of photographs to show the character of the land in question.

It has been consistently held by the Department that under the authority granted the Secretary of the Interior to classify and dispose of public lands, a determination to classify public land as suitable for public sale is not mandatory, but is discretionary. Garfield Taylor, A-28205 (April 26, 1960). Moreover, it has been consistently ruled that in exercising his discretionary authority vested in him to classify public land, the Secretary may properly consider and weigh all of the factors which have a bearing on the suitability for use or disposal, including the effect on the public interest. Cf. Nelson A. Gerttula, 64 I.D. 225 (1957); Ferris E. Boothe, 66 I.D. 395 (1959). The new policies announced by the Department to the effect that public lands will not be classified for public sale where they are located within the influence of expanding cities, etc., as cited in the decision appealed from, were adopted to safeguard against speculation in land sales under the public sale law. Such policies, while in force, must be observed in the processing of all present and future applications for the sale of public lands.

The appellant has not presented any positive or substantial showing that would controvert the findings of the Bureau that the land should not be classified for disposal under the public sale law, and the classification will not be disturbed. Cf. Doris E. Wickman et al., A-27324 (July 13, 1956).

Accordingly, the decision appealed from is affirmed.

Mrs. Louetta Grace Boadway is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

John B. Piccolo

Enclosure

Distribution on page 3

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